

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 466

SECURITIES AND EXCHANGE COMMISSION PETITIONER

vs.

LOUISIANA PUBLIC SERVICE COMMISSION, MIDDLE
SOUTH UTILITIES, INC., AND LOUISIANA POWER
& LIGHT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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Before the Securities and Exchange Commission

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT COM-
PANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW ORLEANS,
PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY,
LOUISIANA GAS SERVICE CORPORATION

(File No. 70-3315)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

Offer of proof

Filed May 2, 1955

I

PRELIMINARY STATEMENT

Under date of November 13, 1954, Louisiana Power & Light Company (herein called Louisiana) filed application to Louisiana Public Service Commission (herein referred to as the Commission) for approval of a proposed plan for disposition of its non-electric properties through the formation of a subsidiary

company to which these properties would be transferred. Louisiana had previously filed its Application-Declaration with the Securities and Exchange Commission (herein sometimes called SEC) under date of November 10, 1954, and the matter was then pending, Securities and Exchange Commission File No. 70-3315 and File No. 31-620. Under date of December 22, 1954, the Commission sent a telegram to the Securities and Exchange Commission requesting a public hearing in that matter, and also requesting the reopening of File No. 59-100 and File No. 54-139, and for a hearing at the same time for the purpose of receiving additional evidence in these files. Under date of December 23, 1954, the Commission dispatched to the SEC its letter of that date, enclosing the formal petition of the Commission and asking for a hearing in the above files. Under date of December 31, 1954, the Commission dispatched its letter bearing that date, forwarding its supplemental petition to the SEC. The Commission is advised that under date of December 31, 1954, Louisiana sent to the SEC a letter stating that Louisiana had no objection to the reopening of proceedings in File No. 59-100 and File No. 54-139. Under date of January 21, 1955, the SEC advised the Commission by letter that the SEC would entertain an offer of proof and brief if filed on or before March 1, 1955, setting out that on or before March 21, 1955, the Division of Corporate Regulation (of SEC), Louisiana Power & Light Company and Middle South Utilities, Inc. could submit proofs in support of or in opposition to the Commission's petition, and stating further that oral argument would be heard at 10 A. M. on March 28, 1955.

Under date of February 14, 1955, the Commission wrote to the SEC, requesting an extension of sixty days from March 1, 1955, within which to file its offer of proof and supporting brief. Enclosed in this letter was a letter from Louisiana, addressed to this Commission, advising that it had no objection to the requested extension of time. Under date of February 25, 1955, the Commission received a wire from the SEC advising that the SEC had extended until May 2, 1955, the time for filing the Commission's offer of proof and supporting brief, and had extended until May 23, 1955, the time for the filing of briefs

by other parties, and fixed oral argument for June 1, 1955,
at 10 A. M.

II

AUTHORITY OF LOUISIANA PUBLIC SERVICE COMMISSION

Louisiana Public Service Commission is vested by the Constitution¹ and laws² of Louisiana with all necessary power and authority to regulate both electric and gas utility companies operating throughout the State of Louisiana, with the exception of certain municipalities which by law have the right to regulate such utilities within their corporate limits. In accordance with the Constitution of Louisiana,³ the Com-

¹ Article 6, P. 4, Constitution of 1921, provides:

"P. 4. Powers and duties of Service Commission.—The Commission shall have and exercise all necessary power and authority to supervise, govern, regulate and control all common carrier railroads, street railroads, interurban railroads, steamboats and other water craft, sleeping car, express, telephone, telegraph, gas, electric light, heat and power, water works, common carrier pipe lines, canals (except irrigation canals) and other public utilities in the State of Louisiana, and to fix reasonable and just single and joint line rates, fares, tolls and charges for the commodities furnished, or services rendered by such common carriers or public utilities, except as herein otherwise provided.

The power, authority, and duties of the Commission shall affect and include all matters and things connected with, concerning, and growing out of the service to be given or rendered by the common carriers and public utilities hereby, or which may hereafter be made subject to supervision, regulation and control by the Commission. The right of the Legislature to place other public utilities under the control of and confer other powers upon the Louisiana Public Service Commission respecting common carriers and public utilities is hereby declared to be unlimited by any provision of this Constitution.

The said Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure as it may deem proper for the discharge of its duties, and it may summon and compel the attendance of witnesses, swear witnesses, compel the production of books and papers, take testimony under commission, and punish for contempt as fully as is provided by law for the district courts."

² Louisiana Revised Statutes, 1952, Title 45, Section 1161 et seq.

³ Article 6, P. 3, Constitution of 1921, provides:

"P. 3. Public Service Commission-Election-Salary and traveling expenses.—There is hereby created a Commission, to be known as the Louisiana Public Service Commission, which shall be composed of three members, who shall be duly qualified electors, to be elected from the districts hereinafter named, at the time fixed for the Congressional elections.

mission is composed of three Commissioners, one elected from each of the three public utility districts into which the State of Louisiana is divided, by the electorate of Louisiana, for six year overlapping terms, and is thus necessarily responsive to the will of the people of Louisiana.

The Commission has, and has exercised, jurisdiction over all the retail electric rates and gas rates of Louisiana Power & Light Company for residential, commercial, industrial, and governmental and municipal services, with the exception of electric rates for service in the 15th Ward of the City of New Orleans, which rates are subject to regulation by the City of New Orleans. All such rates are on file with the Commission, which includes the rates for all gas sold by Louisiana and for all electric energy sold by Louisiana outside of the City of New Orleans, with the exception of electric energy sold at the State line to other utilities, the rates for these sales being on file with the Federal Power Commission. The Commission requires Louisiana and other utilities to file annual reports, which show among other things the earnings for each year. By its Order No. 4346, dated July 29, 1946, the Commission has fixed the electric rate base of Louisiana Power & Light Company and has prescribed its allowable rate of return. Louisiana's electric accounts are classified in accordance with the Uniform System of Accounts prescribed by the Commission, and its gas accounts

No person in the employ of or holding any official relation to any common carrier or public utility under the control of said Commission, or owning any stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. The act of two members when in session shall be the act of the Commission.

The three members of the Railroad Commission of Louisiana in office upon the adoption of this Constitution shall be the members of the Louisiana Public Service Commission and shall serve out the terms for which they were respectively chosen. Upon the expiration of the term of each commissioner his successor shall be chosen for a term of six years. Until otherwise provided by the Legislature, the salary of each commissioner shall be three thousand dollars (\$3,000.00) per annum, payable monthly, on his own warrant. The Commission shall appoint a Secretary and fix his salary, and shall appoint such other employees as may be provided by the Legislature. The commissioners, their attorneys and employees shall receive actual traveling expenses when traveling on business for the Commission. The Commission shall have its domicile at the State Capital, but may meet, hold investigations, and render orders elsewhere in this State."

are classified in accordance with the NARUC System of Accounts.

III

GENERAL STATEMENT

As will be given in more detail hereafter, the Commission offers to prove the following:

(1) The gas system of Louisiana Power & Light Company cannot be operated as an independent system without the loss of substantial economies, which can be secured by the retention of such system by Louisiana Power & Light Company, which is a subsidiary of Middle South Utilities, Inc.

(2) Both the electric system and the gas system of Louisiana Power & Light Company are located entirely within the State of Louisiana.

(3) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

(4) No law of the State of Louisiana prohibits the ownership or operation by a single company of utility assets of an electric utility and a gas utility, and Louisiana has the express approval of this Commission to continue operation of both utility systems.

(5) The public interest and the interest of electric and gas consumers of Louisiana will best be served by the continued operation of both systems by Louisiana.

(6) It is the desire of the official governmental agencies in Louisiana concerned with the services which Louisiana renders, that Louisiana retain both electric and gas systems.

IV

(i) The gas system of Louisiana Power & Light Company cannot be operated as an independent system without the loss of substantial economies, which can be secured by the retention of such system by Louisiana Power & Light Company, which is a subsidiary of Middle South Utilities, Inc.

In support of this proposition, the Commission will offer to prove the following:

1. Attached hereto as Exhibit A is a statement of Louisiana's non-electric customers, sales and revenues for the year 1954. The Commission has, as a result of a great deal of time spent by its staff, caused a detailed separation study to be made of the results which would follow disposition by Louisiana of its non-electric properties and their operation as a separate system. Attached hereto, as Exhibit B, is a copy of this study with attachments in support thereof. The study shows that the total additional cost of such separation to Louisiana's utility customers would be \$957,193.00, of which \$684,377 would be additional cost to Louisiana's electric customers and \$272,816 would represent additional cost to the non-electric customers.

This separation study was made by taking the operations of the Company for the year 1954 and eliminating from the costs of operation all the expenses which could possibly be eliminated during that year if the gas operations had been eliminated. As seen by the attachments to Exhibit B, this study was made in detail not only in the General Office of the Company but at the Division Office and District Office levels. The resulting figure representing the actual cost of operating the electric properties alone during the year was found to be \$684,377 greater than the actual costs charged to electric operations during the year 1954.

The Commission considered several bases for estimating the cost of separate operation of the gas properties and consulted comparative figures of other companies operating separate gas properties. It also considered the study made by Ebasco Services (on file with SEC in files numbered 70-3315 and 31-620 as Exhibit B-15 to Louisiana's Application Declaration). This

latter study was made not in connection with this intervention by the Commission but for the purpose of enabling Louisiana to inform and interest prospective purchasers in these gas properties, the sale of which Louisiana contemplated in accordance with the order of the SEC.

Exhibit C hereto shows the comparative per customer cost of operation for the Mississippi Valley Gas Company for the year 1954 and the cost per customer for Louisiana as estimated by the Commission. According to statistics compiled by the Southern Gas Association, the average per customer cost of the two next larger and the two next smaller in size gas utilities, for the year 1954, was \$22.35. This compares favorably with the \$22.15 per customer cost used by the Commission in its estimate.

The Commission concluded that this study represented an objective and conservative estimate of the expenses of separate gas operation and based its estimates of the cost of such separate operations on this study. The cost of separate operations of gas properties when compared to the actual cost charged to gas during the year 1954 showed a total increase of operating expenses for the separate operations of \$155,981. The Commission study also developed that the gas properties operated separately would need approximately \$778,900 in additional capital expenditures over and above that required by continued combined operation. The Commission estimates that the carrying cost of this additional capital expenditure would amount to approximately \$116,835 per annum, which when added to the increased cost of operations of \$155,981 means a loss of economies totaling \$272,816 in the separate gas operation.

The Commission also determined that 29.26% of Louisiana's electric customers were also gas customers of Louisiana's so that 29.26% or \$200,249 of the additional cost of operating the electric properties would have to be borne by Louisiana's gas customers also.

2. In addition to the loss of substantial economies shown above, as a separate operation the gas system would have to bear the burden of increased cost of debt financing. Under date of October 27, 1954, Louisiana sold \$18,000,000 principal

amount of First Mortgage Bonds at public sale, at a net cost of money to the Company of 3.11% (see SEC File No. 70-3297). Under date of September 24, 1954, the Louisiana Gas Service Corporation, the company which Louisiana caused to be formed to acquire its non-electric properties, after private negotiation with four major insurance companies, obtained an offer to purchase its First Mortgage Bonds to be secured by the non-electric properties of Louisiana Power & Light Company when acquired, at a cost of money of 3.55%, this being the best offer it could obtain. These two prices were obtained at approximately the same time, and there was no substantial change in the bond market rate between those dates. From this it is seen that the cost of money to Louisiana operating the combined properties was 3.111%, whereas the cost of money to a company operating the gas properties alone would have been 3.55%, or a differential of .439%. This, when applied to the \$4,000,-000 of bonds proposed to be initially issued by the gas company would mean an increased cost of money of \$17,600 per annum, increasing, as additional bonds are issued, to \$28,500 per annum should the additional bonds be sold to Connecticut Mutual as contemplated by the plan submitted to SEC by Louisiana. These calculations are set out on Exhibit D hereto. This represents permanent additional costs placed on the consumers of gas in Louisiana, and will increase as the properties grow.

This clearly demonstrable higher cost of first mortgage money which the separate gas operations would be required to pay indicates clearly that the cost of equity financing would also be in excess of the cost of such equity in the present combined operation. Although this added cost of equity financing cannot be exactly estimated, it is a certainty that there would be added cost in such equity financing, resulting necessarily in a higher required rate of return.

3. Examination of the sinking fund requirements of Louisiana's Bond Mortgage on the combined properties shows that a 1% annual appropriation over a thirty year period is required. The mortgage negotiated by Louisiana Gas Service (Exhibit B-3 to Louisiana's Application Declaration in Files Nos. 70-3315 and 31-620) shows that a 3% annual appropriation

over a twenty year period is required. Separate operation of gas, therefore, would appear to require three times the annual charge for sinking fund. This Commission believes that this could become an important adverse factor in determining the allowable rate of return for a gas utility operated separately. The larger sinking fund requirement would necessarily require larger ratios of equity financing, involving greater costs of money. It would also require more frequent financing and refinancing transactions, all of which would be costly to the Louisiana ratepayer.

4. Sales of natural gas are subject to great seasonal variation, and sales of electric energy are also variable, as shown by Exhibit E (See Chart). Comparing these sales, it will be seen that the two systems operated together tend to complement each other. This not only tends to make for a more balanced operation but, from a rate regulation point of view, more or less eliminates the necessity for this Commission giving consideration to such seasonal variations in fixing a rate of return.

There are also considerable variations from year to year in sales of gas, due primarily to variations of weather from year to year. The inclusion of the gas properties with the electric properties eliminates the necessity for this Commission adding to the allowable rate of return for gas a factor to compensate for this risk.

5. Further confirmation of the loss of substantial economies in the case of a separation of the properties is shown by Exhibit F (See Chart), which shows the electric per customer cost of service by Louisiana Power & Light Company, Arkansas Power & Light Company, and Mississippi Power & Light Company for the year 1949 and the year 1954. Figures with respect to Arkansas and Mississippi have been supplied to this Commission by Louisiana Power & Light Company, at the Commission's request.

During 1949, the Arkansas Power & Light Company, Louisiana Power & Light Company and Mississippi Power & Light Company had gas properties for the entire year. The Arkansas Company disposed of its gas property as of January 1, 1950,

and Mississippi disposed of its gas property at January 1, 1952.

For the year 1949, the last full year that these three companies had electric and gas service, and for the year 1954, a study of the electric operating expenses (total operating and maintenance expense less generation, transmission and power purchased expenses) reflects annual and increased costs per customer, as follows:

Company	Cost 1949	Cost 1954	Increased cost 1954 over 1949
Arkansas Power & Light Company	\$27.94	\$36.22	\$8.28
Louisiana Power & Light Company	28.46	28.75	.29
Mississippi Power & Light Company	31.92	35.82	3.90

This would seem to indicate that Louisiana and its customers will find themselves in a precarious position if Louisiana is forced to dispose of its non-electric property.

If Louisiana's cost per customer increased \$8.28 as did Arkansas, less Louisiana's increase of \$.29 per customer, or \$7.99 per customer, the additional annual cost would be \$1,499,731.

If Louisiana's cost per customer increased \$5.80 per customer (the average of Arkansas and Mississippi less Louisiana's increase) the additional annual expense would amount to \$1,088,666.

6. This Commission must concern itself with the welfare of the electric ratepayers as well as the gas ratepayers. One of the larger elements in the cost of electric service is the cost of fuel for Louisiana's generating stations. All of these stations use natural gas for fuel. The fact that Louisiana is a potential customer for large amounts of natural gas for distribution purposes, as well as for fuel, puts it in a better position in interesting suppliers of natural gas in supplying its total requirements, and thus puts it in a better position to get a better price for its fuel requirements for the generating stations.

V

- (2) Both the electric system and the gas system of Louisiana Power & Light Company are located entirely within the State of Louisiana

The maps attached hereto as Exhibits G-1, G-2 and G-3 show the electric and gas properties of Louisiana. As seen from these maps, all of the electric and all of the gas system of Louisiana is located within the State of Louisiana. Map G-1 shows Louisiana's combined gas and electric systems. Map G-2 shows Louisiana's gas system alone by towns. Map G-3 shows communities in Louisiana receiving gas service, and the various companies serving them.

VI

- (3) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation

It is the opinion of the Commission that in the combined operations of gas and electric service, the advantages of localized management are not impaired. Exhibit H shows a chart of the organization of Louisiana. It has been the Commission's experience that in matters of regulation in which the Commission is concerned, that full authority has been vested in the officers of Louisiana, and that in the matter of local service and the handling of local complaints, sufficient authority has been vested in the Division Managers and District Managers to effect all the advantages of localized management.

The Commission's long experience in regulating Louisiana Power & Light Company has indicated that it is an efficient operation. The Commission believes that severance of the gas properties would not improve but would impair this efficient operation.

This Commission has found that regulation of Louisiana in its joint operations has been very effective. Electric and gas rate reductions were put into effect on numerous occasions.

No increase in electric rates has ever been granted to, or ever sought by, Louisiana, although the only other comparable electric utility company in the State has been required to effect a material general rate increase. No general gas rate increase has been put into effect by Louisiana, and the only gas rate increases granted to Louisiana have been in the exact amount of the increase in the cost of the gas purchased for resale by Louisiana.

Other utilities under the Commission's jurisdiction continue to operate both electric and gas systems, among these being Gulf States Utilities Company and Central Louisiana Electric Company, Inc. The Commission has not found that this combined operation in any way impaired the effectiveness of the Commission's regulation of these utilities. The mere fact that Louisiana is a subsidiary of a registered holding company would have no bearing on this situation, since, even if the gas properties were disposed of, Louisiana's electric operations would still be operated by the subsidiary of a registered holding company, and the fact that the gas operations were not, in the Commission's opinion would have no bearing.

VII

(4) No law of the State of Louisiana prohibits the ownership or operation by a single company of utility assets of an electric utility and a gas utility, and Louisiana Power & Light Company has the express approval of this Commission to continue operation of both utility systems

Attached hereto as Exhibit J is an order of this Commission expressly declaring that the disposition by Louisiana of its gas properties is contrary to the public interest and authorizing this application by the Commission to the Securities and Exchange Commission. Attached hereto as Exhibit K is an order adopted by this Commission under date of June 16, 1953 restraining disposition by utilities under its jurisdiction of assets without this Commission's consent. This order was entered because of the Commission's concern that the ratepayers might suffer as a result of the loss of substantial economies of operation as a result of such disposition.

VIII

- (5) The public interest and the interest of electric and gas consumers of Louisiana will best be served by the continued operation of both systems by Louisiana Power & Light Company

As shown by Exhibit B, the minimum additional cost to the electric and gas consumers of Louisiana which would result from a separation of the gas properties would be \$957,193. In most cases, Louisiana serves electricity also to its gas consumers. In addition to this additional measurable cost, there are certain other increased costs which the utility consumer will have to bear, as outlined in paragraph IV above. After careful consideration of the matter, this Commission knows of no offsetting or compensating advantages that would be gained by separate operation.

That the Company has been devoting considerable attention to the building up of the gas property will be apparent from Item "A" of Exhibit I (See Chart). The figures reflect that for each of the years 1952, 1953, and 1954, the gas property percentage-wise has grown more than 70% faster than the electric property.

This same Exhibit I, Item "C", shows that, on a three years average, the electric property forms 91.5% of Louisiana Power & Light Company's total investment in Plant and that non-electric property comprises only 8.5% of Total Plant.

Items "B" and "D" of this same exhibit reflect that, while for the three-year period (1952 through 1954), 16.9% of the Company's charges for Sales Promotion Expenses were to Non-Electric Departments, the Non-Electric Departments provided only 11.27% of the Company's Net Revenues from Operation.

On the other hand, it is the Commission's belief that service to the public will be impaired to a certain extent by the separation. Therefore, it is the considered opinion of this Commission that the public interest and the interest of electric and gas consumers who are customers of Louisiana Power & Light Company will best be served by the retention by that Company of

its gas properties and their operation in combination with its electric properties.

IX

(6) It is the desire of all official governmental agencies concerned with the service which Louisiana Power & Light Company renders, that Louisiana Power & Light Company retain both electric and gas systems

Attached as Exhibit L is a copy of a letter written by the Governor of the State of Louisiana to the Commission, expressing the opinion of the Chief Executive. Attached as Exhibits M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z are resolutions of or letters from the Police Juries of Franklin, Concordia, East Carroll, West Carroll, Jackson, Madison, Morehouse, Plaquemines, Richland, St. Bernard, St. Tammany, Tangipahoa, Livingston and St. Charles Parishes indicating that they favor the retention of the gas properties by Louisiana Power & Light Company.

Attached hereto as Exhibits AA, BB, CG, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, are resolutions of or letters from the Town Councils of Albany, Amite City, Bastrop, Bonita, Collinston, Covington, Delhi, Delta, Epps, Ferriday, Gilbert, Gretna, Hammond, Harahan, Hodge, Independence, Jonesboro, Kenner, Lake Providence, Mandeville, Mangham, North Hodge, Oak Grove, Ponchatoula, Rayville, Slidell, Tallulah, Westwego, Winnsboro, Wisner, and from the Police Juror of Franklin Parish from the Community of Baskin, indicating their approval of the retention of the gas properties by Louisiana Power & Light Company.

The foregoing constitute all of the Towns and all but one of the Parishes, Jefferson, in which gas service is rendered by Louisiana Power & Light Company.

This one missing Parish, Jefferson, did unanimously pass a Resolution on February 2, 1955 in opposition to the Company's disposition of the gas property (Exhibit FFF) but repealed this Resolution unanimously on March 22, 1955 (Exhibit GGG).

Also attached are Exhibits HHH and III relative to the

Parish of Jefferson's retention of attorneys and an Engineer in connection with its proposal to acquire said gas system operating in that Parish.

X

CONCLUSION

This Commission believes that the foregoing showing demonstrates that retention of the gas properties by Louisiana Power & Light Company would be in full compliance with Section 11 (B) (1) of the Public Utility Holding Company Act of 1935. This will be further demonstrated in its accompanying brief and on oral argument. It further believes that this showing demonstrates that the public interest and that of the utility consumers would be best served by such retention.

The Commission reserves the right to make a further showing, if desired, in the light of any offer of proof made by the Division of Corporate Regulations, Louisiana Power & Light Company and Middle South Utilities, Inc.

LOUISIANA PUBLIC SERVICE COMMISSION,
By C. W. COLEMAN,

Secretary..

United States of America

Before the Securities and Exchange Commission

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT COMPANY,
MISSISSIPPI POWER & LIGHT COMPANY, NEW ORLEANS
PUBLIC SERVICE INC., RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

EXHIBIT No. B—SCHEDULE No. 9

Louisiana Power & Light Company

Miscellaneous Direct Expenses—Non-Electric

Expenses in this category include miscellaneous expenses of field operations—the division and district offices. Typical of the type of expense is Postage, Telephone and Telegraph, Employees' Expense Accounts, Managers' Funds, etc.

Water Expenses—Actual 1954:

Direct Operation	\$569
Direct Maintenance	1,364
	————— \$1,933

Gas Expenses—Actual 1954:

Distribution:

Operation	13,936
Maintenance	2,821
Customers' Accounting	20,490
Sales Promotion	20,385
	————— 57,632
	————— 59,565

Expenses that would accompany the non-electric property:

Water (All—as per above)	\$1,933
Gas*	6,685
	—————

Expenses to accompany Non-Electric Operations

Expenses to remain with Company in Electric Operations

*Total cost charged Gas Operations—1954	\$57,632
Average Number Gas Customers	62,116
Annual average cost per customer (cents)	0.93
Number of gas customers in territory where there are no electric customers	7,118
Expenses to accompany Non-Electric 7,118 × \$0.98	6,685

16 S. E. C. VS. LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

**IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY,
LOUISIANA GAS SERVICE CORPORATION**

(File No. 70-3315)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

EXHIBIT NO. A

Louisiana Power & Light Company

Non-Electric Customers, Sales and Revenues, Year 1954

	Number of customers		M. C. F. sales	Operating revenues
	End of year	Average for year		
Gas operations:				
Residential	59,740	57,188	4,079,912	\$2,832,157
Commercial	5,320	4,703	1,121,038	505,610
Industrial	239	208	10,968,815	1,707,486
Government and municipal	18	17	326,744	75,924
Total general business	65,317	62,116	16,496,509	5,121,177
Rent from gas property				141
Customers' forfeited discounts				43,123
Miscellaneous gas revenues				99,745
Total other gas revenue				143,009
Total gas	65,317	62,116	16,496,509	5,264,186
Revenue per customer:				
Residential			\$49.52	
Commercial			107.51	
M. C. F. sales per customer:				
Residential			71.3	
Commercial			238.4	
Revenue per M. C. F. in cents:				
Residential			69.42	
Commercial			45.10	
Industrial			15.57	
Government and municipal			23.24	
General business			31.04	
	Number of customers		M. gallons sales	Operating revenues
	End of year	Average for year		
Water operations:				
Residential	607	590	37,906	\$21,003
Commercial	121	125	12,039	5,760
Industrial	2	3	1,574	518
Total water	730	718	51,519	27,281
Total non-electric revenue				5,291,467

EXHIBIT No. B

*Louisiana Power & Light Company***Additional Estimated Annual Cost of Utility Services to Customers Residing in Louisiana Resulting From Company's Disposition of Non-Electric (Gas and Water) Properties**

Annual additional costs to non-electric customers (See Exhibit No. B-1)-----	\$272, 816
Annual additional costs to electric customers (See Exhibit No. B-2 and schedules attached thereto)-----	684, 377
Total annual additional costs to Louisiana utility customers-----	957, 193

EXHIBIT No. B-1

*Louisiana Power & Light Company***Showing Estimated Annual Additional Costs to an Independent Non-Electric Operation Resulting from Disposition by the Company of Non-Electric Properties—Based on Operating Costs Per Customer**

	Estimate of Cost of the Gas and Water Property being operated separately from Electric	Actual Cost Per Records 1954	Annual Additional Cost to Non-Electric
Gas Operations (Based on 62,116 Avg. Customers):			
Gas Purchased for Resale (Actual)-----	\$2, 379, 608	\$2, 379, 608	
Distribution Expenses @ 8.50/Cust.*-----	528, 000	389, 537	\$138, 463
Customers Accounting @ 4.65/Cust.*-----	288, 800	185, 498	103, 302
Sales Promotion @ 2.25/Cust.*-----	139, 800	136, 631	3, 169
Administrative and General:			
Franchise Requirements (Actual)-----	31, 822	31, 822	
Other @ 6.75/Cust.*-----	419, 300	508, 253	(88, 953)
Total Admin. and General-----	451, 122	540, 075	(88, 953)
Total Gas-----	3, 787, 330	3, 631, 349	155, 981
Water Operations:			
Total Operating Expenses-----	120, 934	20, 934	
Additional Capital Expenditures:			
General Office & Service Building and Storerooms-----	3, 808, 264	3, 652, 283	155, 981
Transportation Equipment-----			
Shop Equipment and Tools-----		250, 000	
Communication Equipment-----		201, 000	
Office Furniture and Equipment-----		65, 500	
Miscellaneous-----		32, 400	
Total-----		195, 000	
\$778, 900 X 15% (Estimated Fixed Charges Necessary to earn a 6% Return)-----		35, 000	
Total Added Annual Costs to Non-Electric Operations Brought About by Separation of Property-----		778, 900	116, 835
			272, 816

() Denotes Credit.

*As no separate study was made of water expenses, the amount used is the same as Actual Cost for 1954.

*See Ebasco Study of August, 1954 for 1955, Exhibit B-5, File No. 70-3315.

EXHIBIT No. B—SCHEDULE No. 10

Louisiana Power & Light Company

Special Services

Amount of Special Services charged to the non-electric operation in

1954----- \$26,133

NOTE.—This amount represents fees for independent auditing service in addition to fees for general services such as, Indenture Requirements, Fiduciary Fees, Insurance, Safety Services, Tax Service, and Services of General Consultants. These charges are of a general nature and represent largely an allocation on a customer basis. It is not felt that the disposition of non-electric property would result in reduced Special Services. This amount would, therefore, be added to the cost of operating the electric property.

EXHIBIT No. B—SCHEDULE No. 11

Louisiana Power & Light Company

Legal Services

Amount of Legal Services charged to Non-Electric Operations in

1954----- \$13,071

NOTE.—This represents largely an allocation on a customer basis of the amount of legal retainer paid. It is not thought that the disposition of non-electric property would result in reduced legal fees. This full amount would, therefore, be added to the cost of operating the electric property.

EXHIBIT No. B—SCHEDULE No. 12

Louisiana Power & Light Company

Regulatory Commission Expense

Regulatory Commission Expense----- \$3,547

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT No. B-2

Louisiana Power & Light Company

Summary of Normal Non-Electric Operating Expenses and Taxes for the Year 1954

Showing Estimated Annual Additional Costs to Electric Operations Resulting From Disposition of Non-Electric Properties

	Sched- ule No.	Actual 1954 charges to gas and water de- partments in present com- bined opera- (books)	Amount of costs (Col. 1) that would be transferred to separate com- pany for non-electric property	Balance (1-2) added costs to electric operations
Gas Purchased for Resale.....	1	\$2,379,608	\$2,379,608	-----
Power Purchased (Water Pumping).....	2	3,903	3,903	-----
Pay Roll.....	3	815,082	423,300	\$391,782
Materials and Supplies.....	4	34,388	34,388	-----
M. and S. Overhead.....	5	1,503	-----	1,503
Automotive.....	6	58,496	58,496	-----
Uncollectible Accounts.....	7	3,323	3,323	-----
Rents.....	8	38,203	4,020	34,183
Miscellaneous Direct Expenses.....	9	59,565	8,618	50,947
 Total Direct Expenses.....		 3,394,071	 2,915,656	 478,415
 Special Services.....	10	 26,433	 -----	 26,133
Legal Services.....	11	13,071	-----	13,071
Regulatory Commission.....	12	3,547	3,547	-----
Insurance.....	13	2,357	450	1,907
Injuries and Damages.....	14	21,933	14,943	6,990
Employees' Welfare.....	15	36,844	16,345	20,499
Pensions.....	16	27,714	13,969	13,745
Franchise Requirements.....	17	33,008	33,008	-----
Miscellaneous General Expenses.....	18	93,605	2,884	90,721
 Total General Expenses.....		 258,212	 85,146	 173,066
 Total Operating Expenses.....		 3,652,283	 3,000,802	 651,481
 Social Security Taxes.....	19	 16,176	 8,424	 7,752
Corporation Franchise.....	20	13,828	-----	13,828
Franchise (Local).....	21	50	50	-----
Occupational License.....	22	16,980	16,980	-----
Real Estate and Personal Property.....	23	167,055	158,239	10,816
Regulatory Commission.....		500	-----	500
 Total Taxes.....		 214,589	 181,693	 32,896
 Total Operating Expenses and Taxes.....		 3,866,872	 3,182,495	 684,377

EXHIBIT No. B-3

Louisiana Power & Light Company

Statement Reflecting the Elimination of Certain Non-Recurring Expenses

	Operating Expenses As Per Books			Less Non-Recurring Expenses	Balance Normal Oper. Exp.
	Gas	Water	Total		
Gas Purchased	\$2,379,608		\$2,379,608		\$2,379,608
Power Purchased		\$3,903	3,903		3,903
Pay Roll	803,304	11,778	815,082		815,082
Materials and Supplies	33,641	747	34,388		34,388
M. and S. Overhead	1,469	34	1,503		1,503
Automotive	57,934	562	58,496		58,496
Uncollectible Accts.	3,323		3,323		3,323
Rents	38,203		38,203		38,203
Misc'l. Direct Expenses	57,632	1,933	59,565		59,565
Total Direct Expense	3,375,114	18,957	3,394,071		3,394,071
Special Services	26,133		26,133		26,133
Legal Services	13,071		13,071		13,071
Regulatory Commission	3,547		3,547		3,547
Insurance	2,174	183	2,357	(See Below)	2,357
Injuries & Damages	21,756	177	21,933		21,933
Employees' Welfare	8,741		8,741	\$(28,103)	36,844
Pensions	111,937	402	112,339	84,625	27,714
Franchise Requirements	31,822	1,186	33,008		33,008
Misc'l. General Expense	93,576	29	93,605		93,605
Total General Expense	312,757	1,977	314,734	56,522	258,212
Total Operating Expense	3,687,871	20,934	3,708,805	56,522	3,652,283

Analysis of Non-Recurring Expenses:

\$(50,000) Credited to Employees' Welfare Expenses and concurrently charged pensions and represents charges of \$7,500-1952, \$42,500-1953 amount applicable to Gas—25%.

\$(83,989) Credited to Employees' Welfare Expenses resulting from Employees Group Life Insurance dividend for year 1953 amount applicable to Gas after allocating \$21,577 to construction—25%.

\$ (12,500)

(15,603)

\$(28,103)

\$84,625

() Denotes red figure.

EXHIBIT No. B—SCHEDULE No. 1
Louisiana Power & Light Company
Gas Purchased—1954
GAS PURCHASED

Source	Location	M. C. F.	Amount
United Gas.....	N. O. Area.....	12,872,691	\$1,698,072
United Gas.....	Southeast La.....	1,318,263	271,173
United Gas.....	North La.....	2,071,572	377,712
Sub-total.....		16,262,526	2,346,957
Olin Gas.....	North La.....	185,317	27,797
Texas Gas.....	North La.....	18,161	4,696
Total.....		16,466,004	2,379,450
Gas Purchased expense.....			158
Total.....			2,379,608

NOTE.—If Company disposes of non-electric property the total amount here reflected will, of course, accompany the non-electric operations.

EXHIBIT No. B—SCHEDULE No. 2
Louisiana Power & Light Company
Power Purchased—Interdepartmental—1954

Power Purchased—Interdepartmental (Water):
 Water Pumping----- 390,323 KWH ----- \$3,903

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT NO. B—SCHEDULE NO. 15
Louisiana Power & Light Company
Employees' Welfare Expenses

	Total cost to company 1954
<i>Employees' welfare expenses</i>	
Employees' Group Life Insurance.....	\$73,857
Employees' Group Health and Accident.....	4,703
Total.....	78,560
 Total Pay Roll—Entire Company—1954.....	6,482,647
Percent of Pay Roll.....	1.21
 Amount applicable to this study on basis of \$423,300 Pay Roll (as revised) @ 1.21%.....	\$51,121
Hospitalization.....	38,193
Miscellaneous Welfare Expenses (including Christmas Parties, Safety Suppers, Publication of House Organ, etc.).....	35,263
 Total.....	73,456
 Total average number of employees.....	1,597
Expense per employee.....	46.00
Amount applicable to this study on basis of 244 employees @ \$46.00.....	11,224
 Total Employees' Welfare Expenses.....	16,345

Analysis of employees' welfare expenses	Total expenses per record	Excluded expenses	Applicable expenses
Pay Roll.....	#28,556	#28,556	
Employees' Group Life.....	(10,132)	(83,989)	\$73,857
Employees' Group Health and Accident.....	4,703		4,703
 Sub-Total.....	23,127	(55,433)	78,560
 Hospitalization.....	38,193		38,193
Supplemental Retirement benefits for 1952 and 1953 Transferred to Pensions.....	(50,000)	(50,000)	
Miscellaneous (Safety Suppers, Christmas Parties, Publication of House Organ, etc.).....	35,263		35,263
 Sub-Total.....	23,456	(50,000)	73,456
 Total.....	46,583	(105,433)	152,016

(*) Denote red figures.

EXHIBIT No. B—SCHEDULE No. 3

Louisiana Power & Light Company

Employee and Pay Roll Reduction Due to Disposition of Non-Electric Property

Name and location	Number of em- ployees	Total earnings	Month of December 1954		
			Distribution of earnings		
			Operations	Construction	Other
Summary					
Northern—Oper.	35	\$10,132	\$7,892	\$2,126	\$114
Southeastern—Oper.	38	11,879	10,061	1,807	11
West Bank—Oper.	18	5,647	4,289	1,332	26
Subtotal	91	27,658	22,242	5,265	151
Northern—Const.	46	11,780	2,392	9,388	9
Southeastern—Const.	55	12,417	3,664	8,358	395
West Bank—Const.	34	8,074	1,935	5,963	186
Subtotal	135	32,280	7,991	23,699	590
Northern—Total	81	21,921	10,284	11,514	123
Southeastern—Total	93	24,206	13,725	10,165	406
West Bank—Total	52	13,721	6,224	7,285	212
Subtotal	226	59,938	30,233	28,964	741
Nondivisional	18	5,368	5,040	384	(56)
Total—December 1954	244	65,306	35,273	29,348	685
Percent		100.0	54.0	44.9	1.1
Year 1954—Based on using 12 months like December as above ¹	244	\$783,700	\$423,300	\$352,200	\$8,200

NOTE.—See Schedules 3-A through 3-C attached.

A thorough review of the Company's payroll was made with Managers and Supervisors to determine the minimum number of employees that must be retained to competently operate the electric department. The study indicated that the above 244 employees would be available to operate the non-electric properties and thus would be "separated" from the Company payroll.

The separately operated electric property would of necessity retain practically all General Office employees (from the President down) even though a percent of such employees time had previously been charged, on a customers basis, to gas and water operation. This same situation would be true as to Division personnel, Customers Billing Operations, Meter Readers, Cashiers, etc.

¹ Proof as to accuracy of using 12 times the amount of December for the year 1954.

	Col. 1	Col. 2	Col. 3	Col. 4
	Actual for Mo. of Dec. 1954	Year based on 12 December (Col. 1 X 12)	Actual for 12 Mos. of 1954	Percent Col. 2 is to Col. 3
Total Payroll	\$539,818	\$6,477,816	\$6,482,647	99.9
Payroll charged to Non-Electric Oper. Expenses	68,068	816,816	815,082	100.2
Payroll charged Total Oper. Expenses	375,569	4,506,828	4,521,195	99.7
Payroll charged to Construction	143,073	1,716,876	1,721,305	99.7

() Denotes credit.

EXHIBIT No. B—SCHEDULE No. 3-A

Louisiana Power & Light Company

Employee and Pay Roll Reduction Due to Disposition of Non-Electric Property

Location and Job Title	Month of December 1954		
	Total earnings	Distribution of earnings	
		Operations	Construction
Northern Division			
Division Engineering:			
Engineer.....	\$539.00	\$520.37	\$9.63
Associate engineer.....	425.00	65.12	38.55
Draftsman A.....	327.60	181.01	156.33
Typist.....	215.04	211.20	(0.74) 3.84
Construction crew (46 employees)	11,788.98	2,392.45	9,387.46 9.07
Division gas supt., 2 gas foremen, 5 welders, 4 mechanics, 1 clerk, 2 truck drivers, 4 helpers, 27 laborers.			
Arcadia:			
Laborer.....	160.68	137.36	32.32
Serviceman B.....	323.19	307.98	15.21
Laborer.....	204.96	175.68	29.28
Clerk C.....	195.52	195.52	
Bastrop:			
Serviceman A.....	485.52	394.94	143.02
Clerk A.....	315.84	315.84	
Serviceman B.....	306.23	187.37	178.86
Helper.....	243.46	155.84	87.62
Helper.....	252.40	252.40	
Clerk C.....	191.52	191.52	
Sales representative.....	408.00		408.00
Ferriday:			
Serviceman A.....	420.07	415.27	4.80
Serviceman B.....	463.22	310.33	152.89
Clerk C.....	124.16	124.16	
Jonesboro:			
Serviceman A.....	430.11	382.69	56.42
Serviceman B.....	339.30	339.30	
Clerk C.....	162.96	162.96	
Oak Grove:			
Serviceman B.....	377.36	264.60	112.67
Clerk C.....	166.96	166.96	
Helper.....	244.53	176.93	66.16
Serviceman B.....	301.46	230.48	47.46
Clerk C (temporary)	104.40	104.40	
Rayville:			
Laborer.....	211.06	181.61	29.45
Clerk C.....	146.16	146.16	
Helper.....	289.85	264.37	25.48
Tallulah:			
Serviceman A.....	399.84	278.46	121.38
Helper.....	240.24	230.22	20.02
Laborer.....	210.45	97.24	113.21
Winnsboro:			
Meter reader.....	238.56	214.42	24.14
Laborer.....	204.96	204.96	
Serviceman B.....	384.78	354.34	30.44
Total Northern, 81.....	21,921.37	10,283.55	11,513.96 123.87

() Denote red figures.

EXHIBIT No. B—SCHEDULE No. 3-B

Louisiana Power & Light Company

Employee and Pay Roll Reduction Due to Disposition of Non-Electric Property

Location and job title	Month of December 1954			
	Total earnings	Distribution of earnings		
		Operations	Construction	Other
<i>Southeastern Division</i>				
Southeastern Gas (55 employees)	\$12,416.50	\$3,663.93	\$8,357.80	\$394.77
1 Engineer, 1 Asst. Engineer, 4 Foremen, 1 Mechanic, 4 Welders, 1 Draftsman, 1 Typist, 4 Truck Drivers, 4 Helpers, and 34 Laborers.				
Amitie:				
Serviceman A.....	467.67	413.37	51.83	2.47
Serviceman B.....	452.62	384.00	59.77	8.85
Serviceman B.....	365.46	350.23	15.23	
Covington:				
District Manager.....	486.00	486.00		
Serviceman A.....	423.05	336.27	85.78	
Serviceman A.....	399.84	389.13	10.71	
Serviceman C.....	287.72	267.41	20.31	
Serviceman B.....	356.16	330.72	25.44	
District Clerk.....	283.92	283.92		
Clerk C.....	147.20	147.20		
Janitor.....	23.40	23.40		
Janitor.....	16.17	16.17		
Helper.....	184.11	138.37	45.74	
Hammond:				
Serviceman A.....	487.90	414.84	73.06	
Serviceman C.....	283.92	236.60	47.32	
Helper.....	219.48	219.48		
Clerk C.....	162.96	162.96		
Ponchatoula:				
Serviceman B.....	337.64	193.33	144.31	
Clerk C.....	146.16	146.16		
Riverlake:				
Technician.....	399.84	399.84		
Serviceman A.....	592.63	580.90	2.64	
Serviceman A.....	409.36	409.36		
Serviceman A.....	425.37	214.40	210.97	
Serviceman A.....	399.84	399.84		
Serviceman C.....	287.30	174.50	112.80	
Serviceman B.....	443.04	403.07	39.97	
Serviceman B.....	426.12	426.12		
Clerk C.....	230.16	230.16		
Clerk B.....	309.06	309.06		
Clerk C.....	191.52	191.52		
Meter Reader.....	241.12	241.12		
Serviceman A.....	399.84	69.02	330.82	
Serviceman B.....	364.64	200.01	74.63	
Clerk C.....	162.96	162.96		
Gas Solicitor.....	372.95	37.74	335.22	
Helper.....	216.58	96.80	119.78	
Clerk C.....	283.92	283.92		
Helper.....	191.52	191.52		
Total Southeastern, 93.....	24,295.66	13,724.44	10,165.13	406.09

EXHIBIT No. B—SCHEDULE No. 16

Louisiana Power & Light Company

Pensions	Total Cost to Company 1954
Pensions -----	\$552,292
Less non-recurring past service benefits-----	338,500
 Balance—Normal -----	 213,792
 Total Pay Roll-----	6,482,647
% of Pay Roll-----	3.30
Amount applicable to this study on basis of \$423,300 Pay roll @ 3.30%-----	13,960

EXHIBIT No. B.—SCHEDULE No. 17

Louisiana Power & Light Company

Franchise Requirements

Franchise Requirements:

Gas Department -----	\$31,822
Water Department-----	1,186
 -----	 33,008

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT No. B—SCHEDULE No. 18

Louisiana Power & Light Company

Miscellaneous General Expenses

Miscellaneous General Expenses:

American Gas Association—1954 Dues-----	\$1,977
Southern Gas Association—1954 Dues-----	907
 Total-----	 2,884

This account covers a various assortment of miscellaneous expenses incurred in or for the General Office of the Company, such as Expense Accounts, Telephone and Telegraph charges, Postage, Trade Associations, Director Fees and Expenses, Trustees Fees, Annual Employee Meetings, etc.

Other than the amounts shown above, it is thought that the 1954 costs would remain with the electric operation.

EXHIBIT No. B—SCHEDULE No. 3-C

*Louisiana Power & Light Company*Employee and Pay Roll Reduction Due to Disposition of Non-Electric
Property

Location and job title	Month of December 1954 ^a		
	Total earnings	Distribution of earnings	
		Operations	Construction
<i>West Bank Division</i>			
West Bank Gas (34 Employees)	\$8,074.16	\$1,935.35	\$5,952.78
1 Engineer, 1 Asst. Engineer, 2 Foremen, 1 Mechanic, 3 Welders, 2 Clerks, 2 Truck Drivers, 3 Helpers, and 19 Laborers.			\$186.03
Arabi:			
Servicemen C.....	283.92	43.94	239.98
Clerk C.....	171.36	171.36	
Helper.....	290.04	290.04	
Gretna Service:			
Serviceman A.....	399.84	399.84	
Serviceman A.....	581.91	252.77	329.14
Serviceman A.....	459.94	433.52	26.42
Serviceman B.....	409.69	256.74	152.95
Serviceman C.....	455.03	217.54	237.49
Gas Solicitor.....	372.96		372.96
Meter Reader.....	288.99	288.99	
Meter Reader.....	344.76	344.76	
Helper.....	240.24	240.24	
Gretna District:			
Clerk C.....	230.16	230.16	
Clerk C.....	230.16	230.16	
Clerk C.....	230.16	230.16	
Janitor.....	204.53	204.53	
Clerk C.....	223.44	223.44	
Clerk C.....	230.16	230.16	
Total West Bank, 52.....	18,721.45	6,223.70	7,285.30
			212.45
<i>General Office</i>			
Central Billing:			
Clerk C.....	159.20	159.20	
Billing Operator.....	295.56	295.56	
Typist.....	240.24	240.24	
Billing Operator.....	308.92	308.92	
Billing Operator.....	333.43	333.43	
G.O. Construction (12 Employees)	3,849.04	3,521.48	383.64
1 Gas Superintendent, 2 Clerks B, 2 Gas Foremen, 2 Mechanics A, 2 Mechanics B, 3 Laborers.			(56.08)
State Meter:			
Clerk C.....	181.44	181.44	
Total Non-Divisional, 18.....	5,367.83	5,040.27	383.64
			(56.08)

() Denotes red figures.

EXHIBIT No. B—SCHEDULE No. 4

Louisiana Power & Light Company

Materials and Supplies—1954

Materials and Supplies:

Gas Operations:

Distribution:

Operation----- \$7,393

Maintenance----- 14,645

Customers Accounting----- 4,152

Sales Promotion----- 353

Admin. & Gen'l.:

Operation----- 4,457

Maintenance----- 2,641

Total Gas----- 33,641

Water Operations:

Operation----- 119

Maintenance----- 628

Total Water----- 747

Total Materials and Supplies----- 34,388

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT No. B—SCHEDULE No. 5

Louisiana Power & Light Company

Materials and Supplies—Overhead—1954

Charged to Non-Electric Operation----- \$1,503.00

It is not considered likely that the present company would be able to reduce its purchasing and other similar costs even though gas and water properties were disposed of. This cost would thus be for account of the electric operations.

EXHIBIT No. B—SCHEDULE No. 6

Louisiana Power & Light Company

Transportation Expense—1954

Transportation Expenses (Automotive) :

Gas Operations:

Distribution:

Operation	-----	\$26,611
Maintenance	-----	3,347
Customers Accounting	-----	8,641
Sales Promotion	-----	7,941
Admin. & Genl.:		
Operation	-----	10,825
Maintenance	-----	569

Total Gas	-----	57,934

Water Operations:

Operation	-----	328
Maintenance	-----	126
Admin. & Genl.—Operation	-----	110

Total Water	-----	562

Total Transportation	-----	\$58,496

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT No. B—SCHEDULE No. 7

Louisiana Power & Light Company

Accounts Written Off As Uncollectible

Uncollectible Accounts:

Gas Operation	-----	\$3,323
Water Operation	-----	
Total Uncollectible Accounts	-----	3,323

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT No. B—SCHEDULE No. 8

Louisiana Power & Light Company

The locations below represent rented property where Company has gas service only. If Non-Electric was disposed of these offices would accompany such but the present Company would continue to retain all other offices for electric operations

Rents:

Jonesboro	\$600
Lake Providence	900
Rayville	600
Covington	600
Slidell	600
Right of Way-Ninemile Point Jefferson Parish	600
 Total Rents	 4,020
Total Rent charged Non-Electric during 1054	\$38,203
Amount of such to accompany Non-Electric Property	4,020
 Amount of Rent to adhere to Electric Property	 34,183

EXHIBIT NO. E

Louisiana Power & Light Company

Statement Reflecting Seasonal Variation in Electric and Gas Sales and how Combined Ownership Tends for a More Balanced Operation

1954	Winter 6 Mos.	Summer 6 Mos.	Total
	Nov.-Dec. Jan.-Apr.	May-Octo- ber	
Electric:			
Residential Revenue.....	\$4,000,973	\$5,116,394	\$9,117,367
Commercial Revenue.....	2,328,576	2,969,939	5,298,515
Total.....	6,329,549	8,086,333	14,415,882
Percent.....	43.9	56.1	100.0
Gas:			
Residential Revenue.....	2,057,077	775,080	2,832,157
Commercial Revenue.....	352,686	152,924	505,610
Total.....	2,409,763	928,004	3,337,767
Percent.....	72.2	27.8	100.0
Combined:			
Revenue.....	8,739,312	9,014,337	17,753,649
Percent.....	49.2	50.8	100.0

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EXHIBIT No. B—SCHEDULE No. 13 (1 OF 2)

Louisiana Power & Light Company

Fire Insurance—1954

Property and Location	1954 Premium Allocated to Non-Electric	To be transferred to New Non-Electric Company
Algiers:		
G. O. and C. B. O., 142 Delaronde St.....	\$206.51	
Misc'l Bldgs. and Auto Sheds.....	15.28	
Amite:		
Office, Display Room and Storeroom.....	52.43	
Arabi:		
Office, Display Room and Storeroom.....	183.89	
Bastrop:		
Office, Display Room and Storeroom.....	76.74	
Covington:		
Office, Display Room and Storeroom.....	41.92	\$41.92
Delhi:		
Office, Display Room and Storeroom.....	28.62	
Meter Repair Shop at Storeroom—B.....	53.08	
Meter Repair Shop at Storeroom—C.....	76.50	76.50
Meter and Regulator Storeroom at Sub.—B.....	15.00	
Meter and Regulator Storeroom at Sub.—C.....		
Bridgedale:		
Gas Meter Shop and Storeroom—B.....	187.49	187.49
Gas Meter Shop and Storeroom—C.....		
Ferriday:		
Office and Display Room.....	4.60	
Gretna:		
Division and District Office.....	60.29	
Hammond:		
Office and Display Room.....	31.92	
Jonesboro:		
Office and Display Room.....	54.99	
Kenner:		
Office, Display Room and Storeroom.....	77.60	

EXHIBIT No. B—SCHEDULE No. 13 (2 OF 2)

Louisiana Power & Light Company

Fire Insurance

	1954 Premium Allocated to Non-Electric	To be transferred to New Non-Electric Company
Lake Providence:		
Office and Display Room.....	\$53.68	\$53.68
Metairie:		
Office and Display Room.....	124.30	
Oak Grove:		
Office and Display Room.....	35.76	
Rayville:		
Office and Display Room.....	45.79	45.79
Tallulah:		
Office and Display Room.....	28.39	
West Monroe:		
Division and District Offices.....	86.06	
Sales Office.....	13.52	
Winnishoro:		
Office, Display Room and Storeroom.....	45.26	
Subtotal.....	1,599.62	405.31
Miscellaneous Fire Schedule.....	32.56	18.82
Total Gas.....	1,632.18	424.23
Water—Arcadia.....	153.22	25.63
		499.83

EXHIBIT No. B—SCHEDULE No. 14

Louisiana Power & Light Company

Injuries and Damages

	<i>Total Cost To Company 1954</i>
Insurance—Injuries and Damages:	
Workmen's Compensation-----	\$78,329
Public Liability-----	20,931
 Total-----	 99,260
Total Pay Roll-----	6,482,647
% of Pay Roll-----	1.53%
 Amount applicable to this study on basis of \$423,300 Pay Roll (as shown on Exhibit B, Sc. No. 3) @ 1.53%-----	 \$6,477
 Excess Public Liability & Property Damage:	
16¢ per \$100 of Operating Revenue Less Intercompany-----	
Amount applicable to this study on basis of \$5,291,467 Operat- ing Revenues @ 16¢ per \$100-----	8,466
 Total insurance—Injuries and Damages-----	 14,943

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EXHIBIT No. B—SCHEDULE No. 19

Louisiana Power & Light Company

Social Security Taxes—1954

	<i>Total Cost To Company 1954</i>
Social Security Taxes:	
Federal Old Age-----	\$101,372
Federal Unemployment-----	13,576
State Unemployment-----	13,847
 Total-----	 128,795
Total Pay Roll-----	6,482,647
Percent of Pay Roll-----	1.99%
 Amount applicable to this study on basis of \$423,300 Pay Roll at 1.99%-----	 \$8,424

EXHIBIT No. B—SCHEDULE No. 20

Louisiana Power & Light Company

Corporation Franchise Tax

This tax is based on the Company's outstanding securities plus items considered as borrowed capital. As the Company did not propose any change in their capital structure the full amount of the tax would remain with the electric operations.

EXHIBIT No. B—SCHEDULE No. 21

Louisiana Power & Light Company

Franchise Tax

Franchise Tax (Local) :

Parish of Jefferson-----	\$25
Parish of St. Bernard-----	25
 Total-----	 50

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT NO. B—SCHEDULE NO. 22

Louisiana Power & Light Company

Occupational Licenses—1954—Gas & Water

	Gas	Water
State of Louisiana	\$11,960	\$75
City and Parish—Nor. Div.	1,940	75
City and Parish—S. E. & W. B.	2,900	
Albany	15	
North Hodge	15	
Total	16,830	150
		16,980

NOTE.—If Company disposes of non-electric property, this full amount would accompany the non-electric operation. No portion would be left to be absorbed by electric operations.

EXHIBIT NO. B—SCHEDULE NO. 23

Louisiana Power & Light Company

Real Estate & Personal Property Taxes that would accompany the Non-Electric property

Parish

Gas:	
Concordia	\$1,989.94
East Carroll	2,847.52
Franklin	5,494.77
Jackson	3,893.00
Jefferson	87,735.50
Livingston	612.42
Madison Parish	2,464.83
Morehouse	9,638.21
Orleans	
Ouachita	
Piaquemines	499.07
Richland	5,517.30
St. Bernard	7,495.47
St. Tammany	7,138.45
Tangipahoa	15,471.04
West Carroll	1,454.32
Total Gas	152,251.84
Water:	
Bienville	3,987.38
	156,239.22

EXHIBIT No. C

Louisiana Power & Light Company

Comparison of Operating Costs per Average Gas Customer of the New Non-Electric Company with other "ke Companies in the South

Operating Cost per average Gas Customer of New Non-Electric Operation—See Exhibit B-1-----	\$22.15
Operating Cost per average Gas Customer of Mississippi Valley Gas Company (Gas properties formerly owned by Mississippi Power & Light Company) for year 1954 ¹ -----	22.26
Operating Cost per average Gas Customer for 1954 of the two companies in the Southern Gas Association, who are just under this New Non-Electric Company in size, and the two companies just over the New Company in size ² -----	23.14, 23.80, 20.11, 22.85

NOTE.—Expenses here reflected include Distribution, (Operation and Maintenance), Customer Accounting and Collecting, Sales Promotion and Administrative and General.

¹ Data from Mississippi Valley Gas Company

² Data from Southern Gas Association. None of these four companies have electric property

EXHIBIT No. D

Louisiana Power & Light Company

Approximate Increased Cost of Debt Financing of Non-Electric Company Over Company Serving Combination Customers

Interest cost of Bond Money to Louisiana Gas Service Corporation-----	3.55 %
Latest Interest Cost of Bond Money to Louisiana Power & Light Company-----	3.111%

Difference in Interest Cost----- .439%

Additional Annual Interest Cost of First Contemplated Non-Electric Company borrowing over cost to Company having combination properties:

$\$4,000,000 \times .439\% ----- \$17,590.00$

Additional Interest Cost per annum to Non-Electric Company when \$6,500,000 are outstanding----- \$28,535.00

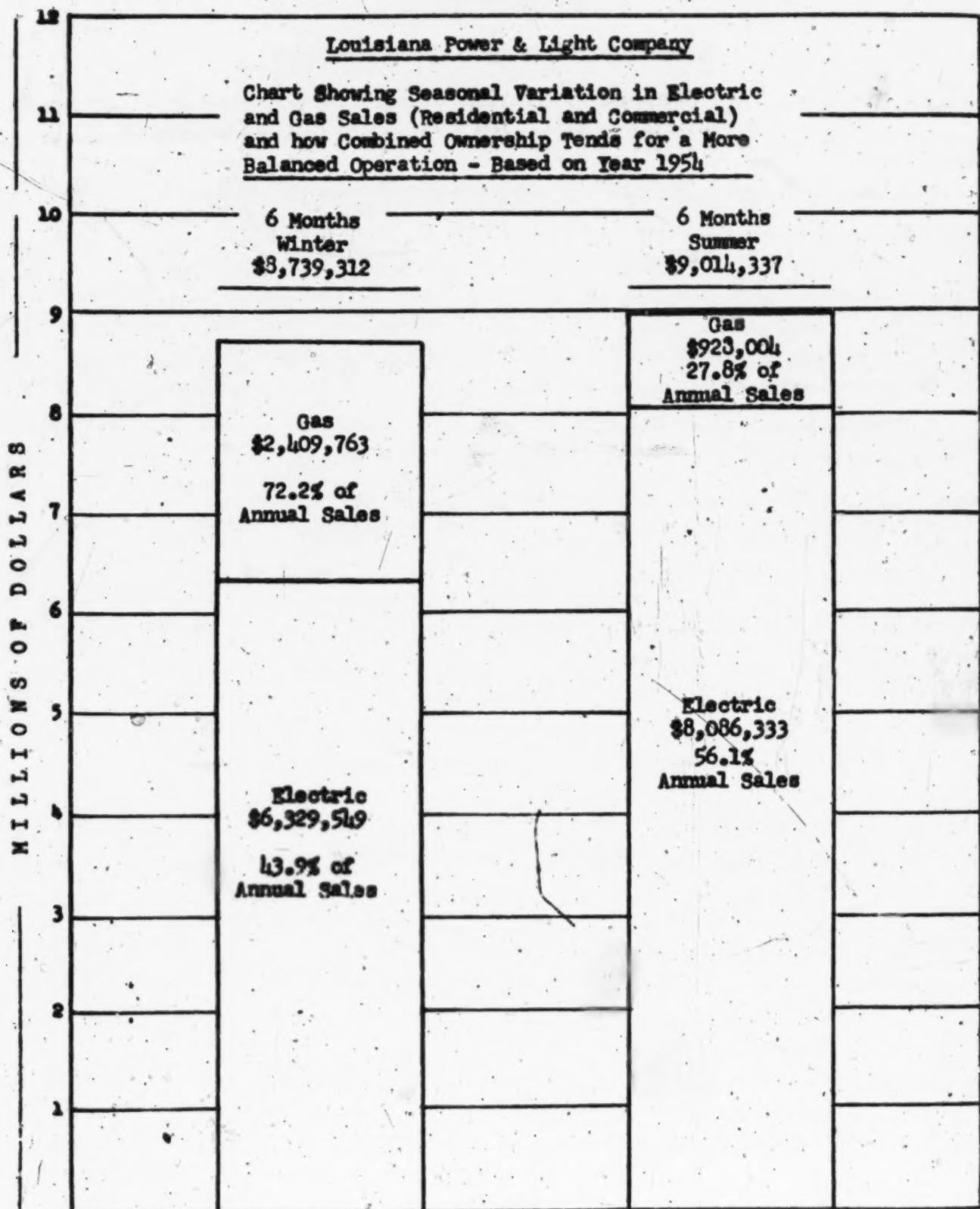


EXHIBIT No. F

Louisiana Power & Light Company

Comparison of Certain Electric Operating Expenses Per Customer of Louisiana Power & Light Company with Arkansas Power & Light Company and Mississippi Power & Light Company before and after the Latter Concerns Disposed of Their Non-Electric Properties

(000's omitted)

LOUISIANA POWER & LIGHT COMPANY

	1949 ¹	1954
Total Operating Expenses.....	\$8,764	\$9,625
Less:		
Generation Expenses.....	\$1,931	\$2,914
Purchased Power.....	2,994	875
Transmission Expenses.....	262	5,187
Average No. Electric Customers.....	125,682	3,577
Average Cost per Customer.....		187,701
	28.46	5,396
		28.75

MISSISSIPPI POWER & LIGHT COMPANY²

	1949	1954	
Total Operating Expenses.....	\$6,987	\$12,427	
Less:			
Generation Expenses.....	\$586	\$4,518	
Purchased Power.....	2,421	1,964	
Transmission Expenses.....	227	3,234	299
			6,781
Average No. Electric Customers.....	117,557	3,753	
Average Cost per Customer.....		157,602	5,646
	31.92		35.82

ARKANSAS POWER & LIGHT COMPANY³

	1949	1954	
Total Operating Expenses.....	\$13,116	\$20,237	
Less:			
Generation Expenses.....	\$2,191	\$6,710	
Purchased Power.....	4,487	3,281	
Transmission Expenses.....	408	7,086	620
			10,611
Average No. Electric Customers.....	215,823	6,030	
Average Cost per Customer.....		265,765	9,626
	27.94		36.22

¹ The last year that all three companies operated gas properties.

² Disposed of gas properties as of January 1, 1952.

³ Disposed of gas properties as of January 1, 1950.

Louisiana Power & Light Company

Chart showing Comparison of Certain Operating Expenses Per Customer of Louisiana Power & Light Company with Arkansas Power & Light Company and Mississippi Power & Light Company before and after the Latter Concerns Disposed of Their Non-Electric Properties

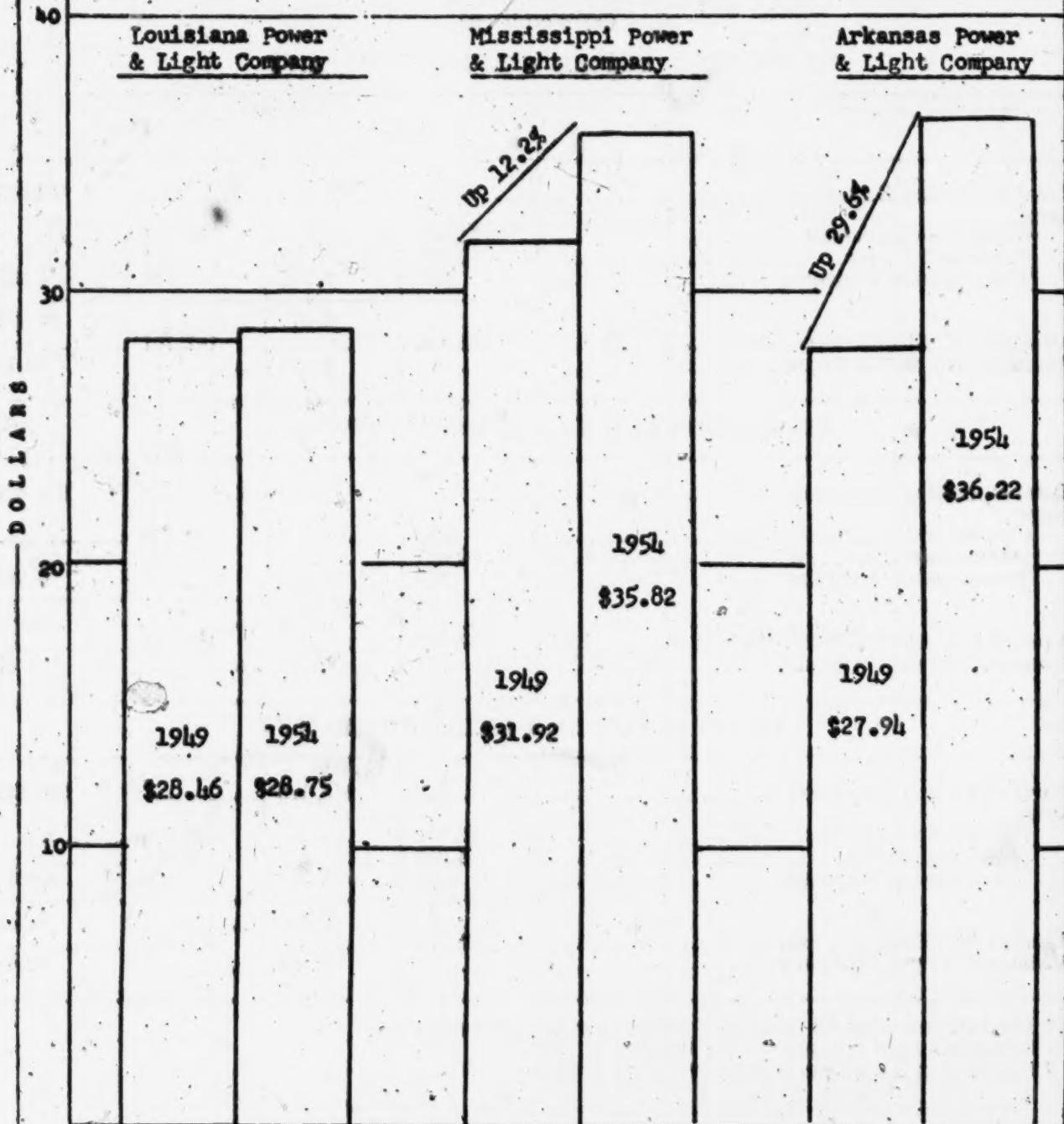


EXHIBIT NO. I

Louisiana Power & Light Company

Miscellaneous Statistics

Item	1952	1953	1954
A. No. of Customers—End of Year			
Electric Customers.....	168,028	183,447	192,431
Increase over prior year (1).....	8,777	8,503	8,708
% Increase.....	5.5	5.1	4.7
Non-Electric Customers.....	56,150	61,086	66,047
Increase over prior year.....	4,915	4,936	4,961
% Increase.....	9.6	8.8	8.1
B. Sales Promotion Expense			
Charged to Electric.....	\$540,368	\$605,725	\$665,041
Charged to Non-Electric.....	99,714	134,747	136,632
Total.....	640,082	740,472	801,673
% Charged Electric.....	84.4	81.8	83.0
% Charged Non-Electric.....	15.6	18.2	17.0
C. Plant Account			
Electric.....	\$90,807,780	\$103,249,500	\$118,908,717
Non-Electric.....	8,695,422	9,611,645	10,735,426
Total.....	99,503,172	112,861,145	129,644,143
% Electric.....	91.3	91.5	91.7
% Non-Electric.....	8.7	8.5	8.3
D. Net Revenues from Operation (2)			
Electric.....	\$3,853,818	\$4,499,440	\$5,144,141
Non-Electric.....	558,764	485,684	664,110
Total.....	4,412,582	4,985,124	5,808,251
% Electric.....	87.3	90.5	88.6
% Non-Electric.....	12.7	9.7	11.4

¹ After eliminating customers secured with purchased property.

² Includes retroactive adjustments for Federal Income Taxes.

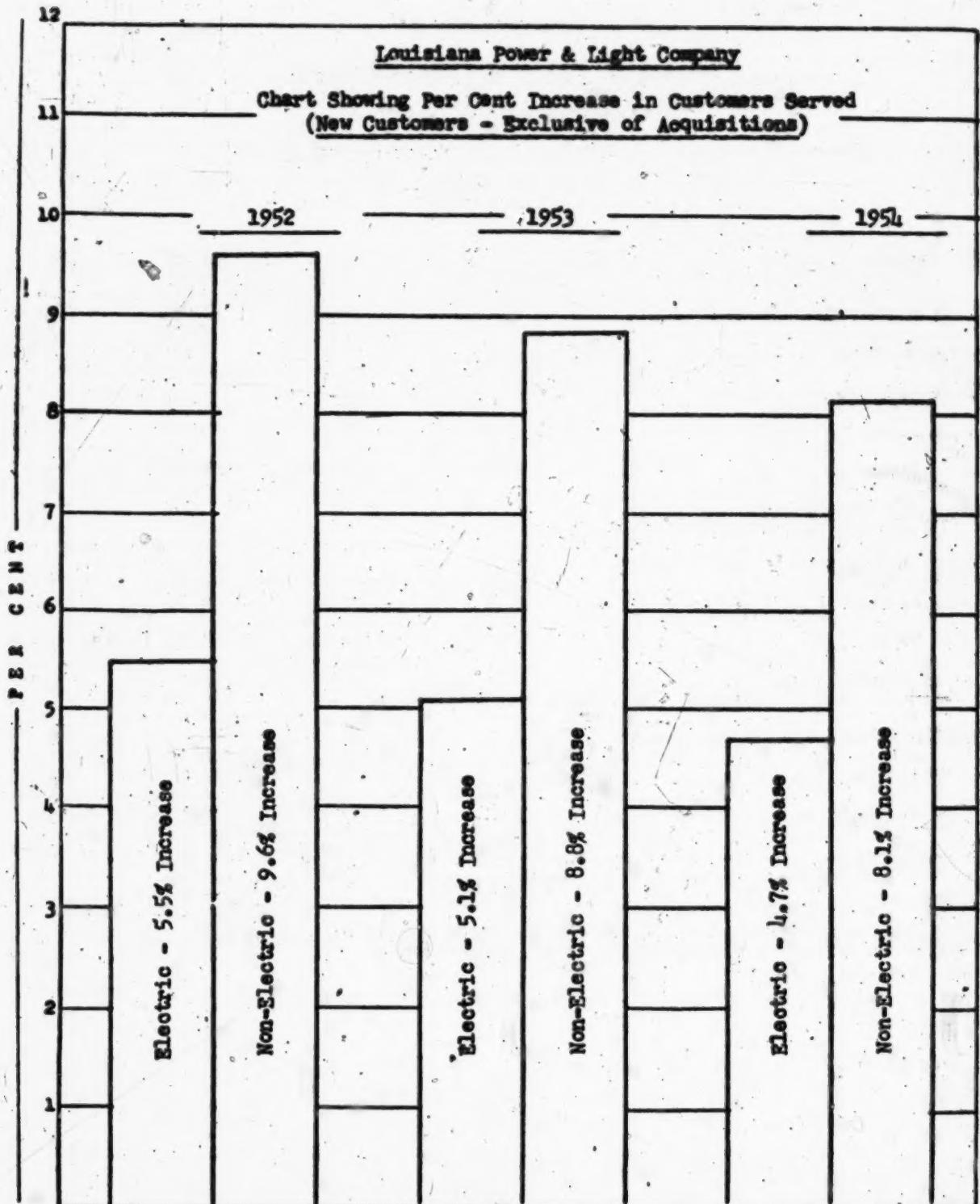


Exhibit J

LOUISIANA PUBLIC SERVICE COMMISSION

Resolution introduced by Commissioner Nat B. Knight, Jr., and unanimously passed, in session held at Baton Rouge, Louisiana, November 30, 1954:

Whereas, the Securities and Exchange Commission in its Docket 59-100 in which Middle South Utilities, Inc., Arkansas

Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc. were respondents, has issued an order under authority of the Public Utility Holding Company Act of 1935 directing Louisiana Power & Light Company to divest itself of its natural gas distributing properties in Louisiana, and

Whereas, Louisiana Power & Light Company in consequence of such order has applied to this Commission for authority to transfer its Louisiana natural gas distributing properties to a newly-formed corporation known as Louisiana Gas Service Corporation, and

Whereas, heretofore these gas properties have been operated by the personnel of Louisiana Power & Light Company, many of whom also conduct the electric utility operations of that company, and

Whereas, the separation of the gas properties from the electric properties and the transfer of such gas properties to a new corporation will require the creation and establishment of an entirely new organization and staff of employees as well as the acquisition of separate offices and a great deal of new equipment to conduct the gas utility operations, with an inevitable increase in the operating cost of both the electric and gas properties, and

Whereas, such increased operating costs appear to be unnecessary, uneconomic and contrary to the public interest, particularly the interests of the gas and electric customers of Louisiana Power & Light Company,

Now therefore be it resolved, That this Commission immediately apply to the Securities and Exchange Commission for the reopening of the proceedings leading to the issuance of its order above referred to and for the vacation and revocation of the said order; insofar as it directs Louisiana Power & Light Company to dispose of its gas properties; and that the Utilities Division of this Commission be directed to make an immediate investigation of this situation and develop such information as

may be pertinent for submission to the Securities and Exchange Commission in support of the application herein authorized.

(s) **HARVEY BROYLES,**

Chairman.

(s) **WADE O. MARTIN,**

Commissioner.

(s) **NAT B. KNIGHT, JR.,**

Commissioner.

By ORDER OF THE COMMISSION:

Baton Rouge, Louisiana, November 30, 1954

C. W. COLEMAN,

Secretary.

A true copy.

C. W. Coleman,

Secretary.

Exhibit K

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

At a session of the Louisiana Public Service Commission held at its offices in Baton Rouge, Louisiana, on June 9, 1953, certain questions arose as to the degree of control which this Commission should exercise over sales, leases, mergers, consolidations, and changes of control of public utilities subject to its jurisdiction.

The Commission having been vested by the Constitution of 1921 with all necessary power and authority, among other things, to supervise, govern, regulate and control all street railroads, telephone, telegraph, gas, electric light and power, water works, and common carrier pipe lines, hereby recognizes the present ownership of every such public utility now coming under its jurisdiction in accordance with annual reports on file with this Commission for the year ended December 31, 1952, or for such fiscal year ended in 1952 as may be applicable.

The attention of the Commission has been called to the fact that utility systems have, in the past, been sold or otherwise effected change of ownership or control without authority and

without the knowledge of the Commission or any member of its staff until after such sale or change of ownership has been consummated, and it is hereby:

Ordered, that from the date of this order, the sale, lease, merger, consolidation, or other change in the ownership of the assets of public utilities or any controlling part thereof subject to the jurisdiction of this Commission is hereby prohibited without first having obtained an order of authority from the Commission for such change in ownership.

(Signed) HARVEY BROYLES,
Chairman.

(Signed) WADE O. MARTIN, SR.,
Commissioner.

(Signed) NAT B. KNIGHT, JR.,
Commissioner.

BY ORDER OF THE COMMISSION:

Baton Rouge, Louisiana, June 16, 1953.

(Signed) C. W. COLEMAN,
Secretary.

Exhibit L

[Copy]

STATE OF LOUISIANA
EXECUTIVE DEPARTMENT
BATON ROUGE

FEBRUARY 10, 1955.

SECURITIES AND EXCHANGE COMMISSION,

Washington, D. C.

GENTLEMEN: In your Docket 59-100, in which Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc. were respondents, you have issued an order under authority of the Public Utility Holding Company Act of 1935 directing Louisiana Power & Light Company to divest itself of its natural gas distributing properties in Louisiana.

For many years Louisiana Power & Light Company has operated in the electric and natural gas utility business in

numerous localities throughout Louisiana and has rendered very satisfactory service in these fields. Throughout the years they have built up a very efficient organization which handles both the gas and electric phases of the business. Since the same supervisory, engineering, accounting and other personnel handle both the gas and electric business, and to a great extent the same equipment (particularly automotive equipment) is used in both, the company has been able to operate at considerably lower cost than would have been the case had the two businesses been operated separately.

To us in Louisiana it seems inevitable that upon the divestment by Louisiana Power & Light Company of its gas properties, and the subsequent operation of those properties by another independent company with an entirely different organization, increased operating costs in rendering these utility services to the public must follow. The cost to Louisiana Power & Light Company of rendering electric utility service alone, and to the new company of rendering gas service alone, cannot possibly, as we see it, be as economical as if the two were operating together as at present.

With these increased operating costs pressure would of course be exerted upon our Public Service Commission to grant increases in the retail rates for these electric and gas services to the public, and my concern with this matter springs primarily from my interest in the consumers being served by this utility.

I am informed that the Louisiana Public Service Commission has filed with you a petition seeking reconsideration of your orders in this and certain related cases. I sincerely hope that this petition will receive your favorable consideration, for I feel certain that further analysis of this situation, particularly in the light of the evidence which our Public Service Commission expects to present, will convince you that the best interests of the public will be served by permitting Louisiana Power & Light Company to retain and operate both its electric and natural gas services.

With best wishes, I am

Sincerely,

Robert F. Kennon.
ROBERT F. KENNON.

Exhibit M

A RESOLUTION

Whereas, the Louisiana Power and Light Company has been ordered by the Securities and Exchange Commission, a bureau of the Federal Government, to divest itself of all of its utility properties with the exception of the electric; and

Whereas, this would have the Louisiana Power and Light Company sell its gas properties which include its distribution system and other facilities in many towns and parishes in the state; and

Whereas, the Louisiana Power and Light Company is one of the largest taxpayers in Franklin Parish, Louisiana, and its rates are fair and just and its service excellent;

Therefore, be it resolved, that the Police Jury of Franklin Parish, Louisiana, go on record as being opposed to any such separation and beg the Louisiana Public Service Commission to protest this order from the Securities and Exchange Commission ordering Louisiana Power and Light Company to separate its gas properties.

This resolution was offered by Mr. Ellerman, seconded by Mr. Carter, and passed with the following yea and nay vote:

Yea: Turner

Garner

Carter

Lee

Peoples

Sanders

O'Brien

Ellerman

Tarver

McIntyre

Nay:

Absent: McCat

Adopted and approved this 1st day of February, A. D. 1955.

P. B. TURNER,

President.

Attest:

W. R. Wherland,

Clerk.

Exhibit M is representative of Exhibits M through Exhibits III inclusive, which are not printed herein. These consist of letters and resolutions from the following municipalities:

Police Jury of Franklin Parish (Exhibit M).

Police Jury of Concordia Parish—Ward 7 (Exhibits N-1 through N-3 inclusive).

Police Jury of East Carroll Parish (Exhibit O).

Police Jury of West Carroll Parish (Exhibit P).

Police Jury of Jackson Parish (Exhibit Q).

Police Jury of Madison Parish (Exhibit R).

Police Jury of Morehouse Parish (Exhibit S).

Police Jury of Plaquemines Parish (Exhibit T).

Police Jury of Richland Parish (Exhibit U).

Police Jury of St. Bernard Parish (Exhibit V).

Police Jury of St. Tammany Parish (Exhibit W).

Police Jury of Tangipahoa Parish (Exhibit X).

Police Jury of Livingston Parish (Exhibit Y).

Police Jury of St. Charles Parish (Exhibit Z).

Village of Albany (Exhibit AA).

Town of Amite City (Exhibit BB).

City of Bastrop, Parish of Morehouse (Exhibit CC).

Village of Bonita (Exhibit DD).

Village of Collinston (Exhibit EE).

City of Covington (Exhibit FF).

Town of Delhi (Exhibit GG).

Village of Delta (Exhibit HH).

Village of Epps (Exhibit II).

Town of Ferriday, Concordia Parish (Exhibit JJ).

Village of Gilbert (Exhibit KK).

City of Gretna (Exhibit LL).

City of Hammond (Exhibit MM).

City of Harahan (Exhibit NN).

Village of Hodge (Exhibit OO).

Town of Independence (Exhibit PP).

Town of Jonesboro (Exhibit QQ).

City of Kenner (Exhibit RR).

Town of Lake Providence (Exhibit SS).

Town of Mandeville (Exhibit TT).

Town of Mangham (Exhibit UU).
Village of North Hodge (Exhibit VV).
City of Oak Grove (Exhibit WW-1 through 3 inclusive).
Town of Ponchatoula (Exhibit XX-1 through 2 inclusive).
Town of Rayville (Exhibit YY).
Town of Slidell (Exhibit ZZ).
City of Tallulah (Exhibit AAA).
City of Westwago (Exhibit BBB).
Town of Winnsboro (Exhibit CCC).
Village of Wisner (Exhibit DDD).
Community of Baskin (Exhibit EEE).
Policy Jury of Jefferson Parish (Exhibit FFF).
Police Jury of Jefferson Parish (Exhibit GGG).
Police Jury of Jefferson Parish (Exhibit HHH).
Police Jury of Jefferson Parish (Exhibit III).

(File endorsement omitted.)

Before the Securities and Exchange Commission

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT
COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW
ORLEANS PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY,
LOUISIANA GAS SERVICE CORPORATION

(File No. 70-3315)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

Brief on behalf of Louisiana Public Service Commission

(Filed May 2, 1955)

May it please the Commission:

A. Background summary

Under date of March 20, 1953, the Securities and Exchange Commission (herein called the SEC), after hearing, entered its Order in proceedings File No. 59-100 and File No. 54-139, directing, among other things, that, Louisiana Power & Light Company (herein called Louisiana) to dispose of its non-electric properties. The Louisiana Public Service Commission (herein called the Commission) did not take part in the hearing before SEC preceding this order, not having at that time made a study of the effects of a disposition by Louisiana such as was subsequently ordered by SEC. Under date of June 16, 1953, the Commission entered its order prohibiting any utility subject to its jurisdiction from disposing of any of its utility assets subject to its jurisdiction, without first obtaining the Commission's consent.

Under date of November 13, 1954, Louisiana applied to the Commission for permission to dispose of its non-electric properties by transferring the same to a specially formed subsidiary corporation (Louisiana Gas Service Corporation) under a plan which Louisiana had previously submitted to SEC in its Application-Declaration filed with SEC under date of November 10, 1954, in Files Nos. 70-3315 and 31-620.

After a preliminary study of the effects of such disposition proposed by Louisiana, under date of December 22, 1954, the Commission, by telegram, requested the SEC for a public hearing in regard to the proposed plan, and for a reopening of File No. 59-100 and File No. 54-139.

Under date of January 21, 1955, the SEC advised the Commission that the SEC would entertain an offer of proof and a brief, if filed on or before March 1, 1955. This date for filing was subsequently extended until May 1, 1955. This brief and the accompanying Offer of Proof are filed in response to said letter of January 21, 1955, as extended.

B. Position of the Commission

The Commission respectfully represents that the SEC should permit a public hearing with respect to Louisiana's Application in Files Nos. 70-3315 and 31-620, and permit the reopening of Files Nos. 59-100 and 54-139 for the purpose of receiving important new evidence to be offered by the Commission, not available at the time of the hearings therein, and for the purpose of hearing additional arguments not heretofore presented. The Commission's position is based on the following propositions:

I. The Commission proposes to introduce facts and present arguments not considered by the SEC at the hearing which resulted in its Order dated March 20, 1953.

II. In the light of the additional evidence which the Commission will present, it will be clear that the conditions of Section 11 (B) (1) of the Public Utility Holding Company Act of 1935 will be complied with in the retention by Louisiana of its gas properties.

III. The legislature history of the Public Utility Holding Company Act shows that the question of whether gas and electric services should be retained in one company is a matter primarily of State policy; the policy of the State of Louisiana favors such retention.

IV. The public interest is best served by the retention of the gas properties by Louisiana.

V. From an over-all point of view, it would appear that the Public Utility Holding Company Act has accomplished its purpose with respect to this utility and that further disintegration will only prove harmful.

pose of its non-electric properties pursuant to Section 11 (b) (1) of the Act.

4.

Petitioner seeks a review of the order of Commission dated September 13, 1955 made in its proceedings entitled:

"In the Matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., Respondents, File No. 59-100; Electric Power & Light Corporation, File No. 54-139; Louisiana Power & Light Company, Louisiana Gas Service Corporation, File No. 70-3315; Louisiana Power & Light Company, File No. 31-620. (Public Utility Holding Company Act of 1935)."

8.

5.

This Court has jurisdiction in this matter under the provisions of Section 24 (a) of the Act and under the provisions of the Administrative Procedure Act (5 U. S. C. A., Sec. 1009, et seq.).

6.

Louisiana Public Service Commission avers that the Commission's order of September 13, 1955 is erroneous, capricious, arbitrary, contrary to the law and the evidence, and constitutes an illegal exercise of power by the Commission; said order should be reviewed by this Court and set aside, and the matter should be remanded to the Commission for further proceedings and further consideration; and in due course the Commission should set aside its order of March 20, 1953 and should hold that under the provisions of the Act, Section 11 (b) (1) the Louisiana Power & Light Company should not be required to dispose of its non-electric properties;

That this Court should stay the effectiveness of the order of September 13, 1955 and the order of March 20, 1953 pending final disposition of this petition to review. A separate petition for stay is being filed contemporaneously with this petition and is requested on the grounds set forth herein;

That the Court should order and direct that a certified copy of this petition to review be forthwith served by the Clerk of

C. The Commission proposed to introduce facts and present arguments not considered by the SEC at the hearing which resulted in its Order dated March 20, 1953

As set out in the Commission's Offer of Proof, the Commission has caused its staff to make a detailed separation study, a summary of which is attached to the Offer of Proof as Exhibit B. A great deal of the time has been spent on this study by the staff of the Commission, and it covers all phases of the operations of Louisiana. It not only represents a study of the Home Office records of Louisiana, but reflects investigations made at the Division Office and District Office levels. It also reflects the information contained in the records of the Commission, and reflects the experience of the Commission in its regulation of this utility and the familiarity of the staff and members of the Commission with local conditions affecting the properties and their operations.

This is evidence which certainly should be considered by SEC, since it is material of prime relevancy prepared by the public State authority charged with the regulation of this utility and the protection of consumers and the general public.

Indeed, the SEC, in its opinion in connection with its Order of March 20, 1953, gave as one of its reasons for reaching the conclusion which it did:

"No study of any kind was introduced to show what the expense of the gas properties would be if they were to be operated as a separate unit."

This would clearly seem to be reason enough for opening the record for the purpose of receipt of this evidence.

As shown by the summary of this study, Exhibit B, the disposition by Louisiana of its gas properties will result in the loss of substantial economies in the operation of the separated gas system. In its opinion in connection with its Order of March 20, 1953, the SEC commented:

"As indicated, the estimate of loss of economies does not relate directly to the additional expense that might be incurred by a separated gas system, but rather was restricted to the additional expense that might be incurred by the electric properties of Louisiana."

this Court upon the Commission, and that thereupon the Commission shall certify and file in this Court a Transcript of the Record upon which the orders of September 13, 9 1955 and March 20, 1953 were entered:

That the Court should grant such other relief as it may deem just and proper.

7.

The Commission's order of September 13, 1955 was entered pursuant to a petition by the Louisiana Public Service Commission for reopening of the proceedings before the Commission under which its order of March 20, 1953 was rendered. The Louisiana Public Service Commission filed an Offer of Proof accompanied by its brief. On July 7, 1955 oral argument was heard before the Commission on said petition of the Louisiana Public Service Commission to reopen the proceedings. The Commission's order of September 13, 1955 denied the petition to reopen the record. This denial constituted error, and the Commission should have reopened the proceedings to hear the evidence, proposed in petitioner's Offer of Proof, and eventually set aside its order of March 20, 1953. Said Offer of Proof set forth the following reasons for reopening and reversal of the Commission's Order (these being the points upon which petitioner intends to rely in this Court):

A. There is no law of the State of Louisiana prohibiting ownership or operation by a single company, such as Louisiana Power & Light Company, of both an electric and a gas utility. Louisiana Power has express approval by petitioner to continue operation of both its electric and gas systems. It has 10 been the general policy of petitioner not to separate electric and gas utility systems in a company.

B. The provisions of the Act, Section 11-(b) (1), when properly followed by the Commission under the facts set forth in the Offer of Proof, show that (1) both the electric and gas systems of Louisiana Power are located entirely within the territorial limits of the State of Louisiana; (2) the gas system of Louisiana Power cannot be operated as an independent system without the loss of substantial economies; and (3) continued combination of the electric and gas systems of Louisiana

The evidence now offered clearly establishes loss of economies directly related to the additional expense which would be incurred by a separated gas system. Since the SEC has already pointed out the relevancy and importance of such evidence, it would seem clear that the record should be opened to receive this evidence which is now available and is offered by the Commission.

Since the SEC's Order of March 20, 1953, and as a step in compliance with that order, Louisiana caused a study of the separate operations of its gas system to be made by Ebasco Services. This study was made so that a prospective purchaser of these properties would have full information, and so that Louisiana would be able to dispose of the properties on the most advantageous terms obtainable. This study, of course, was not before the SEC at the time of its order of March 20, 1953, but it is now on file with the Commission in Files 70-3315 and 31-620 as Exhibit B-15 to Louisiana's Application-Declaration. This study should be considered by the SEC in connection with Files Nos. 59-100 and 54-139, and those files should be opened for the purpose of receiving this evidence, and SEC's order reconsidered in the light of the additional evidence.

Since the SEC's order of March 20, 1953, the additional cost of debt financing of a separately owned gas system has been accurately established in the market place. Under date of October 27, 1954, Louisiana sold \$18,000,000 principal amount of First Mortgage Bonds, after public bidding, at a net cost of money to Louisiana of 3.11%. At approximately the same time, Louisiana Gas Service Corporation, the company formed to operate the non-electric properties separately, after negotiations with four insurance companies, obtained as its best offer for its First Mortgage Bonds a rate of 3.55%, or a differential of .44% in the cost of first mortgage money for the separate operation of the non-electric properties. This tangible evidence was not available in 1953. Since it is clearly relevant, the record should be opened to receive it and the SEC's order reviewed in the light of this as well as other new evidence.

By like token, it has now been established in the market-place, that the separately operated non-electric properties

would have to carry the cost of sinking fund charges three times as high as those required of a combined operation. This is evidence not available and not considered by the SEC when it entered its order of March 20, 1953.

The Commission also made a study of the effect of seasonal variations in the sales of gas and electric energy, and in Exhibit E to its Offer of Proof offers to show that the variations in the sales of gas and electricity tend to complement each other. This is a factor not previously considered by the SEC.

Since the SEC order of March 20, 1953, sufficient time has elapsed to make available the results of operations of Mississippi Power & Light Company and Arkansas Power & Light Company after the disposition by those companies of their gas properties. Those gas companies serve natural gas in territories adjacent to the system of Louisiana. In Exhibit F, the Commission offers to show the comparative cost of service of Louisiana, Arkansas and Mississippi in the years 1949 and 1954. In the year 1949, all three companies operated both electric and gas services. In the year 1954, Arkansas and Mississippi operated electric services only, and Louisiana operated both gas and electric services. This evidence was not available when the SEC entered its order of March 20, 1953, and should be received and considered at this time.

At the time of the hearings preceding the SEC's order of March 20, 1953, the Commission took no position with respect to the disposition by Louisiana of its gas properties. The Commission at that time had not given full consideration to the effect of such a disposition, and, indeed, had not anticipated that the SEC would order such disposition. Following the entry of the SEC order of March 20, 1953, the Commission did give consideration to the matter and, on June 16, 1953, entered its order (Exhibit K to the Offer of Proof) in anticipation of further study of the matter. Since that time, the Commission has given very careful consideration to the matter and has made the studies hereinabove referred to and described in the Offer of Proof. As a result, the Commission has come to the conclusion that such a disposition would be contrary to the public interest, and contrary to the interests of Louisiana's

customers. It is submitted that the SEC should reconsider its order in the light of the said conclusions of the Commission.

The Commission addressed a letter to each of the Police Juries and Town Councils from which Louisiana holds gas franchises, asking these public bodies their opinion as to whether or not they felt that their territories would be best served by a separate gas company, or, as at present, by Louisiana in combination with its electric operations. As shown in the Offer of Proof, it was with one exception the unanimous conclusion of all of these public bodies that the public would be best served by the retention of the gas properties by Louisiana. We submit that the SEC should reopen the files involved and reconsider its order in the light of the expressions of these public bodies.

In short, it is submitted that the weight of the additional evidence now offered, and not available at the time of the SEC's order of March 20, 1953, is so great that the records in Files 59-100 and 54-139 should be reopened for reception of such evidence, and the order of March 20, 1953 reconsidered in the light of such evidence.

D. In the light of the additional evidence which the Commission will present, it will be clear that the conditions of Section 11 (B) (1) of the Public Utility Holding Company Act of 1935 will be complied with in the retention by Louisiana of its gas properties

There would appear to be no serious contention that the standards of subsections (B) and (C) of Section 11 (B) (1) are met in the retention of this gas system by Louisiana, and in this connection reference is made to paragraphs V and VI of the Offer of Proof. The maps, Exhibits G1, G2 and G3, demonstrate that the properties are all located in Louisiana, that the size of the gas system is such as to conform with the standards of subsection (C), and that the gas system is an integrated system within the meaning of Section 2 (a) (29) (B) of the Public Utility Holding Company Act. The only matter, therefore, to consider is whether the proposed additional gas system cannot be operated as an independent system without

the loss of substantial economies presently enjoyed. In the Commission's Offer of Proof, it is shown through a detailed separation study that there will be an over-all annual loss of economies in the operation of the systems separately totalling \$957,193. The Commission considers this loss of economies both substantial and important. In the operation of the gas system alone, the annual loss of economies amounts to \$272,816. This loss of economies in the operation of the gas system alone is considered by this Commission substantial and important. In addition to these losses of economies in operation, the separate operation of the gas properties would be burdened with additional cost of debt financing, as is clearly demonstrated in the Offer of Proof, and would additionally be saddled with added costs of equity financing. In the Offer of Proof, it has been demonstrated that the sinking fund requirements of a separate operation would be three times as large. In its opinion in connection with its order of March 20, 1953, the SEC suggests that only those economies related to the additional system should be considered. It is submitted, however, that when loss of substantial economies in the separated gas system have been proven, as will be the case here, that failure to take into consideration also the loss of economies in the principal electric system constitutes a shutting of one's eyes to reality. Certainly this Commission is very much concerned about the loss of economies in the retained system as well as the loss of economies in the new separated system, since it is its public duty to protect the ratepayers of Louisiana served by utilities under its jurisdiction.

It is suggested in the SEC opinion that even if the loss of economies to the principal electric system were a relevant factor, this loss should have been based upon all the electric operations of Middle South Utilities. The loss of economies to the principal electric system of Louisiana Power & Light Company will have to be borne by the ratepayers in Louisiana outside of the area served by New Orleans Public Service, and none of the ratepayers of Mississippi or Arkansas or the territories served by New Orleans Public Service will be concerned in the least bit with these losses of economies. This Commission is not concerned with the loss of economies of the other

companies in the Middle South system, and the loss of such economies would appear to have absolutely no relevancy to the question here before the SEC. As was said in *The North American Company*, 11 SEC 194, 208:

"The phrase 'substantial economies' in Clause A refers to economies which may be secured by the systems themselves rather than economies which may be secured by the holding company. This was the clear intent of Congress (see H. R. Rep. No. 1903, 74th Cong., 1st Session, 1935, p. 71) and in fact argument by all counsel in this case has been premised on this view."

In its opinion in connection with its order of March 20, 1953, SEC cites: *North American Company v. SEC*, 11 SEC 194, 133 F. 2d 148, aff. 327 U. S. 686; *Engineers Public Service Company*, 12 SEC 41, 138 F. 2d 936; *The Philadelphia Co. v. SEC*, Holding Company Act Release No. 8242 (June 1, 1948), 177 F. 2d 720. It is submitted that none of these cases are controlling of the present case.

In the *North American Company* case, there was no such showing of substantial economies as has been demonstrated in this case. Although a figure for loss of economies was given, the SEC states:

"There is no indication of the method by which this figure has been calculated." (11 SEC 217)

In this *North American Company* case, the loss of substantial economies urged as the basis for retention of the gas system were the loss of direct financial assistance from the holding company and the loss of interchange of statistics and operating information. The Court, in its decision, said that such an issue is one on which a court cannot review and reweigh the evidence. This is not the situation here, inasmuch as it is the duty of the SEC to weigh and reweigh evidence on this issue, and the opinion of this Commission, the administrative agency most closely involved in the regulation of this utility, should be given great weight by SEC, just as the findings of SEC on this issue are given great weight by the Courts. In the *North American* case, it was also found that the standards of Clause C were not met, and this in part was the basis of this decision.

In the case of *Engineers Public Service Co. et al. v. SEC*, supra, the estimated loss of economies were much smaller in amount than in the present case, and the only estimates were those prepared by executives of the utility company itself. In this instance, the estimates have been prepared by the public regulatory body having jurisdiction over the utility involved. In the *Engineers Co.* case, the Commission found that the record would not sustain more than half of the claimed economies. In concluding that these losses of economies were not "important", the Court said:

"But Congress was not so much concerned with the profit motive of utilities as with the evils that have become prevalent through combinations of utilities. It was first concerned with the wiping out of the evils which the practice of utility combinations had produced, and Congress only consented to dull the blade of its chosen weapon in proved hard cases." It is submitted that the ultimate purpose of Congress in seeking to wipe out the evils inherent in the holding company system was the protection of the general public consuming and paying for the ultimate utility services. In the present case, it is amply clear that no evil will be cured by the disposition of these gas properties, while, on the contrary, it is amply clear that the ratepayers will in the long run be harmed.

In this same *Engineers Public Service* case, in considering the retainability of the Gulf States gas system as an additional system, where it was shown that the additional cost of operating as an independent gas company would be \$42,024, the Court states:

"In the opinion of the writer, the admitted facts establish the retainability of the gas system as an additional system if Gulf States is chosen as the principal system."

We respectfully call your attention to the language of the minority opinion in this case, which we quote for convenience, in part, as follows (138 F. 2d 944):

"The majority opinion on this subject does not seem to give sufficient effect to the obvious intent of Congress to protect an established association of public utility systems under common control when it is found to satisfy the standards

of substantial economy, restricted geographic location and moderate size described in paragraphs A, B and C respectively of P. 11 (b) (1). It is the opinion of the writer that the Commission is directed by the statute to give as much weight to these paragraphs as to the provisions of the section immediately preceding, which require the limitation of the holding company system to a single integrated system with certain additions. This conclusion is reasonable because the evils which the statute was designed to eradicate do not prevail under the conditions described in the lettered paragraphs; and it is certain, as the legislative history shows, that the Act would not have received the approval of Congress if it had not contained the provisions which prohibit the unnecessary disturbance of existing conditions.

"If the terms of paragraph (A) are given normal meaning and weight, it is hard to understand why substantial savings in operational expenses do not amount to the 'substantial economies' upon which the application of the paragraph depends. The findings of fact by the Commission are of course conclusive, if supported by substantial evidence, P. 24; but in this instance the evidence is undisputed and it remains only to decide whether a loss of substantial economies would result from a severance of the two systems. It is putting it too strongly to say, as the Commission did, that there must be clear and convincing evidence of loss of economies which would seriously impair the efficiency of the systems. The Act does not require more than a preponderance of evidence to support such a finding; *nor does it require that the economies must be so great that their loss would seriously impair the system. Such a loss would not be merely substantial; it would be destructive.*"

The case of *The Philadelphia Company et al v. SEC* involved the dissolution of a holding company, as contrasted to the present case which simply involves the disposition of properties by a subsidiary. In this case, the Commission simply held that the burden of proof of establishing loss of substantial economies had not been borne, since it found defective the methods and assumptions by which the conclusion of the Company's witnesses had been reached. The Court simply held that it would

not go behind the findings of the administrative agency. The situation involved in *The Philadelphia Company* case is greatly different from the one involved here. In the case of Louisiana, its gas system is serving numerous small communities scattered over parts of the State of Louisiana, which presents an entirely different operational problem from a system serving a large metropolitan community or large metropolitan communities. We agree with the Court that "substantial" is a relative term, but submit that the loss of economies here involved, as it relates to Louisiana, is definitely substantial.

E. The legislative history of the Public Utility Holding Company Act shows that the question of whether gas and electric services should be retained in one company is a matter primarily of State policy; the policy of the State of Louisiana favors such retention

It should be noted at the outset that the Commission has full jurisdiction over all of the retail gas and electric rates of Louisiana, except those for electric service in the 15th Ward of the City of New Orleans. The Commission has found that its regulation is effective and in no way circumvented by the mere fact that Louisiana is a subsidiary of Middle South Utilities. The matter of competition in the field of distribution of gas and electric energy is, as stated in *Re Northern States Power Company*, 6 P. U. R. 3rd, p. 48, "essentially a question of State policy". This is illustrated in the legislative history of the Public Utility Holding Company Act. In Senate Report 621, 74th Congress, 1st Session, pp. 29 and 30, the following is to be found:

"The restrictions of this section apply only to acquisition of interests in the future and are fourfold: (1) To confine, as to the future, the activities of public-utility holding companies to those essentially connected with, or necessarily incidental to, the operation of gas and electric utilities; (2) to prevent the future indiscriminate combination of domestic and foreign utilities in order to avoid the injury to investors which come from the fact that the underlying foreign utilities are not subjected to the same type of State regulation as domestic operating com-

panies and represent an entirely different type of investment; (3) to prevent the use of the holding company in the future to deny to the public the wide-spread and economic use of both natural gas and electric energy merely because it is to the selfish advantage of a given company to foster the use of one of its products as against the other and deprive the public of the benefits of competition between the two; and (4) to prevent the use of the holding device in the future to evade State laws which prohibit the common control in a single utility of the gas and electric utilities serving the same territory.

"Subsection (a) covers the first category of restriction set forth above—registered holding companies are not permitted to acquire in the future any interest in any business other than (1) the business of a public utility company as such, and (2) subject to such limitations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers or to protect acquisitions detrimental to the carrying out of any provision of Section 11, a business reasonably incidental, or necessary or appropriate to the economical and efficient conduct of a business in which the holding company is lawfully engaged or has an interest. *These provisions are so designed as not to interfere with State policy which allows or fosters the carrying on of waterworks, traction-business, bus systems, etc., by electric and gas utilities so long as that policy will not deter the carrying out of the provisions of Section 11.*

"Subsection (b) is concerned with the unfair subordination of the production and transportation of natural gas to the production and distribution of electric energy, and vice versa. It prohibits in the future the acquisition, in the same holding company system, of electric or gas utilities and facilities for the transportation of natural gas in interstate commerce or for the production of natural gas, except to the extent that the acquisition is necessary or appropriate to serve the requirements of the public utilities in the system.

"Subsection (d), in line with this same basic policy, prevents the bringing into the same holding company system of a gas-utility company and an electric-utility company serving sub-

stantially the same territory where State law prevents the combination of the gas utility and electric utility in the same company. This subsection is concerned with competition in the field of distribution of gas and electric energy—a field which is essentially a question of State policy, but becomes the proper subject of Federal action where the extra-State device of a holding company is used to circumvent State policy."

It is true that the above comment is with reference to Section 8 of the Act relating to the acquisition of properties, and it is also true that in *The Philadelphia Company* case, supra, it is pointed out that Section 8 does not specifically authorize the acquisition of gas systems. Nevertheless, the Act must be construed as a whole, and the reasoning behind the provisions of Section 8 relating to the acquisition of gas systems by electric holding company systems must be the same as that governing the disposition of such systems pursuant to Section 11 (B) (1). These cannot in reason be two different standards for these two sections. Perhaps the reason why the combination of gas and electric properties was considered primarily a matter of State policy was that one of the primary objectives of the Holding Company Act was to make regulation of public utilities at the State level more effective. This is brought out in the comment of Senator Sisson at 79 Congressional Record, 10540 (1935):

"Mr. SISSON. * * * Now, the holders of the stock of the Niagara Hudson Power Corporation are not affected by this bill—either the House bill or the Senate bill or the bill either with or without the elimination of the so-called 'death penalty' provision clause. Its business is purely intrastate. But what we are hoping is that when we get the holding companies in a position where they can be properly regulated, as they can be by only Sections 11 and 13 of the Senate bill in this legislation, that we may then look to the States for proper regulation of the operating companies."

6 In United States Court of Appeals for the Fifth Circuit.
Louisiana Public Service Commission, Petitioner,

vs. Number 15820.

Securities and Exchange Commission, Respondent.

To the Honorable the United States Court of Appeals for the
Fifth Circuit:

The petition of the Louisiana Public Service Commission
respectfully represents:

1.

Petitioner is an agency of the State of Louisiana; its domicile
and principal place of business is at Baton Rouge, Louisiana
within the jurisdiction of this Court.

Under the Constitution and laws of Louisiana (Louisiana
Const. 1921, Art. 6, Sec. 4, La. R. S. 1952, Title 45, Sec. 1161,
et seq.) said Louisiana Public Service Commission has all
necessary power and authority to regulate both electric and gas
utility companies operating throughout the State of Louisiana.
As such, petitioner has exercised jurisdiction, and continues to
do so, over all the retail electric and gas rates of Louisiana
Power & Light Company.

2.

7 The Securities and Exchange Commission, hereinafter
referred to as the Commission, established under Section
4, Title 1 of the Securities and Exchange Act of 1934, is
charged with the administration of the Public Utility Holding
Company Act of 1935, 15 U. S. C. A. Sec. 79, et seq. (The Act).

3.

On September 13, 1955, the Commission entered its order
pursuant to Section 11 (b) (1) of the Act denying the petition
of the Louisiana Public Service Commission insofar as it re-
quested the reopening of the proceedings in which the Commis-
sion's order of March 20, 1953 was entered. By said order of
March 20, 1953, the Commission directed Louisiana Power &
Light Company, hereinafter referred to as Louisiana Power,
which is engaged in the electric, gas and water business, to dis-

Power does not result in a system so large as to impair the advantages of localized management, efficient operation, or effectiveness of regulation.

Petitioner proposed in its Offer of Proof to show that the total additional cost of the rate-payers of Louisiana which would result from the separation of the gas and electric systems of Louisiana Power would be \$957,193 annually, of which \$684,377 would be additional cost to Louisiana Power's electric customers, and \$272,816 would be additional cost to the gas customers. The exhibits submitted in connection with the Offer of Proof were prepared by the experienced full time staff of public utility investigators who made a separation study of the affairs of Louisiana Power and submitted the results in exhibit form attached to the Offer of Proof.

C. The Commission has held that loss of economies, as provided for under Section 11 (b) (1) (A) of the Act, relate only to the additional (gas) system and do not relate to the loss of economies to the electric customers. It persists in said holdings despite the intent of the Act considering it in its entirety, and without reference to the public interest. The loss of \$684,377 of economies in the electric operations must be paid for by the electric customers should the separation of properties be finally consummated pursuant to the Commission's orders.

D. Petitioner, the Louisiana Public Service Commission, is experienced in rate investigations and has a duty to protect and preserve the public interest in Louisiana, which results in a duty to the electric customers as well as the gas customers of Louisiana Power. It views with much apprehension the loss to Louisiana ratepayers of \$957,193 per year, which will result, according to its Offer of Proof and exhibits attached thereto, if the Commission's order of separation is finally consummated. It is joined in this apprehension by the principal governmental officials of the State of Louisiana concerned with the operation of Louisiana Power in the territory it serves; these include the Governor of the State, the officials of 28 of the 30 towns and communities served, and of 14 of the 15 parishes served by Louisiana Power.

E. The Commissioner erred in interpreting the Act and in applying the provisions of Section 11 (b) (1) of the Act. It should have reopened the proceedings in the petition of Louisiana Public Service Commission, received the evidence set forth in petitioner's Offer of Proof, and reversed its order of March 20, 1953 requiring Louisiana Power to dispose of its nonelectric power properties, because the previous findings of the Commission are not supported by substantial evidence.

12 Wherefore, petitioner prays for a review of the Commission's orders as above set forth, that these proceedings be remanded to the Commission to receive the evidence submitted in petitioner's Offer of Proof, and in due course the Commission's order of March 20, 1953 should be set aside insofar as it orders Louisiana Power & Light Company to dispose of its non-electric properties; that all proceedings before the Commission should be stayed pending the determination of this review and for a reasonable time thereafter; and that such other relief be granted to petitioner as the Court may deem just and proper.

(Signed) ROBERT A. AINSWORTH, JR.,
Of AINSWORTH & AINSWORTH,
Attorneys for Petitioner, Louisi-
ana Public Service Commis-
sion.

1650 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

In the United States Court of Appeals for the Fifth Circuit.

ORDER TO FILE PETITION. October 12, 1955.

(Title omitted.)

13 A petition for review of an Order of the Securities and Exchange Commission dated September 13, 1955, "In the Matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., Respondents, File No. 59-100; Electric Power &

Light Corporation, File No. 54-139; Louisiana Power & Light Company, Louisiana Gas Service Corporation, File No. 70-3315; Louisiana Power & Light Company, File No. 61-620. (Public Utility Holding Company Act of 1935)", having been presented to this Court;

It Is Ordered that said petition be filed and docketed as of October 12, 1955,

And It Is Further Ordered that a copy of this Order and said Petition be forthwith served upon the Securities and Exchange Commission, and that said Securities and Exchange Commission, upon service of such copies, forthwith certify and file in this Court, a transcript of the record in the proceedings in conformity to Rule 38, as amended, of this Court.

JOHN A. FEEHAN, JR.,
Clerk, U. S. Court of Appeals,
Fifth Circuit,
By (Signed) CLARA R. JAMES,
Chief Deputy Clerk.

New Orleans, Louisiana, October 12, 1955.

14 In United States Court of Appeals for the Fifth Circuit.

CERTIFICATE LISTING AND DESCRIBING RECORD
IN PROCEEDINGS BEFORE SECURITIES AND EX-
CHANGE COMMISSION.—Filed Nov. 10, 1955.

(Title omitted.)

Pursuant to the provisions of Section 24 (a) of the Public Utility Holding Company Act of 1935 and Rules 38 and 39 of this Honorable Court, the Securities and Exchange Commission, respondent herein, certifies that the following list of transcripts of testimony, exhibits, documents and other materials, all as described in said list, comprise the record upon which the orders complained of by petitioner were entered:

I. The Evidence.

Document No.		Description
1.	Transcripts of hearing held February 19, 1953 and February 20, 1953.	
2.	Middle-South Exhibit No.	
	D-1	Document entitled, "Middle South Utilities, Inc.—Historical Financial and Operating Data."
3	D-2	Document entitled, "Middle South Utilities, Inc.—Financial and operating data 1949."
[15] 4	D-3	Document entitled, "Middle South Utilities, Inc.—Financial and operating data 1950."
5.	D-4	Document entitled, "Middle South Utilities, Inc.—Financial and operating data 1950."
6	D-5	Document entitled, "Middle South Utilities System—Electric revenues, sales, customers and unit data by classifications" (years 1950, 1951, 1952).
7	D-6	Document entitled, "Middle South Utilities System—Electric-Industrial Revenues by major types of industry year 1952."
8	D-7	Financial statements consisting of consolidating balance sheet, consolidating statement of income, consolidating summary of surplus, and notes to financial statements, December 31, 1952—Middle South Utilities, Inc. and subsidiaries.
9	D-8	Map dated December 1925, showing properties constituting Middle South System.
10	D-9	Map dated December 1937 showing properties constituting Middle South System.
11	D-10	Map dated January 1943 showing properties constituting Middle South System.
[16] 12	D-11	Map dated January 1953 showing properties constituting Middle South System.
13	D-12	(Document entitled, "1949 Annual Report—Middle South Utilities, Inc.")
14	D-13	(Document entitled, "1950 Annual Report—Middle South Utilities, Inc.")
15	D-14	(Document entitled, "Annual Report 1951—Middle South Utilities, Inc.")
16	D-15	Document entitled, "Newyear—Arkansas: 1949—Annual Report—Arkansas Power & Light Company." [erroneously referred to as Exhibit D-21 at page 18 of transcript]
17	D-16	Document entitled, "Annual Report 1950—Arkansas Power & Light Company." [erroneously referred to as Exhibit D-22 at page 18 of transcript.]

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Docu- ment No.	Middle-South Exhibit No.	Description
18	D-17	Document entitled, "Arkansas Newsreel—1951 Annual Report—Arkansas Power & Light Company." [erroneously referred to as Exhibit D-23 at page 18 of transcript.]
19	D-18	(Document entitled, "1949 Annual Report—Louisiana Power & Light Company.")
[17] 20	D-19	(Document entitled, "1950 Annual Report—Louisiana Power & Light Company.")
21	D-20	(Document entitled, "1951 Annual Report—Louisiana Power & Light Company.")
22	D-21	(Document entitled, "Mississippi Power & Light Company—1949 Annual Report.")
23	D-22	(Document entitled, "1950 Annual Report—Mississippi Power & Light Company.")
24	D-23	(Document entitled, "1951 Annual Report—Mississippi Power & Light Company.")
25	D-24	Document entitled, "New Orleans Public Service Inc.—Annual Report" (1949).
26	D-25	Document entitled, "Annual Report—New Orleans Public Service Inc. 1950."
27	D-26	Document entitled, "Annual Report 1951—New Orleans Public Service Inc."
28	D-27	Document entitled, "Mississippi Power & Light Company—Reconciliation of operating expenses as shown in S-1 filed to be effective March 6, 1953 with operating expenses by classified accounts."
[18]	D-28	Document entitled, "Mississippi Power & Light Company—Electric operating costs exclusive of production and transmission."
30	D-29	Document entitled, "Mississippi Power & Light Company—Estimated effect of wage increase Year 1952."
31	D-30	Document entitled, "Mississippi Power & Light Company—Operating expenses, excluding production & transmission electric department."
32	H-1	Map entitled, "Map of Greater New Orleans Louisiana."
33	H-2	Map entitled, "Middle South Utilities, Inc. Electric System Map."
34	H-3	Document entitled, "Middle South System—Electric Generating Stations."

Document	Middle-South No.	Exhibit No.	Description
35	H-4		Document containing generating station statistics taken from FPC-1 reports of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc.
36	H-5		Document entitled, "Middle South Systems—System Peak Demand and System Input for year 1952."
[19] 37	H-6		Document entitled, "Middle South System—Maximum Individual Company Hourly Demand and System Diversity for Year 1952."
38	H-7		Map entitled, "Middle South Systems—Proposed and Future Microwave System," dated February 11, 1953.
39	H-8		Document entitled, "Middle South Systems—Energy flows on intercompany connections"—1952.
40	H-9		Documents entitled, "Middle South Systems—Scheduling of power supply sources for system load—Actual operations for February 14, 1952" and "Middle South Systems—Scheduling of Power Supply sources for system load actual operations for June 27, 1952."
41	H-10		Document entitled, "Middle South Systems—Purchases from outside sources," 1952, and "Middle South Systems—Sales to outside companies for joint account," 1952.
42	H-11		Document entitled, "New Orleans Public Service Inc.—Electric schedule (Public Utility—2)".
43	H-12		Document entitled, "Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company—Memorandum re administration of intrasystem transactions and system planning and development."
[20]	H-13		Document entitled, "Summary of intercompany transactions under Louisiana Power & Light Company rate schedule FPC 5 and attached memorandum agreement Year 1952." (only the one sheet was put in evidence, not memo "attached".)
45	H-14		Documents entitled, "Energy sales and revenues between Middle South system companies year 1952" and "Middle South Systems—Revenues from outside companies from joint account sales year 1952."
46	N. O. 1		Document entitled, "Report to Honorable Rufus E. Foster, Judge of the United States Court by Citizens' Advisory Committee on Public Utilities—Hugh McCloskey, Chairman—March 23, 1921."

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Document No.	Middle-South Exhibit No.	Description
47	N. O. 2	Pamphlet entitled, "New Orleans Public Service Inc.—New Orleans, La." containing copies of Act 94 of 1921 Louisiana State Legislature, and Ordinances Nos. 6822, 7067, 7068, 7069 and 8423 C. C. S. of the City of New Orleans, La.
48	N. O. 3	Document entitled, "A comparison of annual cost of electric, gas and transit services in New Orleans computed at rates prevailing in cities with population ranging between 300,000 to 1,000,000."
[21]		
49	N. O. 4	Document entitled, "New Orleans Public Service Inc.—Natural gas revenues, sales and customers—year 1952."
50	N. O. 5	Document entitled, "New Orleans Public Service Inc.—Transit revenues and passengers carried—Year 1952."
Turner's Exhibit No.		
51	1	Map entitled, "Louisiana Power & Light Company System Map."
52	2	Map entitled, "State of Louisiana."
53	3	Chart showing organization of Louisiana Power & Light Company together with certain statistics relating to company's operation.
54	4	Document entitled, "Louisiana Power & Light Company—Meters and personnel by class of service December 31, 1952."
55	5	Document entitled, "Louisiana Power & Light Company—Comparison of District Operating Costs 12 months ended September, 1952—Single Service vs. Combination Service."
56	6	Aerial photograph taken in November, 1951, of metropolitan New Orleans area.
[22] 57	7	Document entitled, "Louisiana Power & Light Company Gas Operations 12 months ended December, 1952."
58	8	Map entitled, "Communities in Louisiana Receiving Natural Gas," with sheets attached headed "List of Gas Companies from AGA Rate Book."
59	9	Document entitled, "Louisiana Power & Light Company—Comparison of costs—12 months ended September 1952—Single Service vs. Combination Service with three (3) largest districts eliminated."
60	10	Document entitled, "Louisiana Power & Light Company—Comparison of Costs—12 months ended September 1952—Single service vs. Combination Service."
		Incorporated by Reference Page 95 of transcript of hearing held February 19, 1953:
61		Form U5S report of Middle South Utilities for the year 1951 (File No. 30-225).

[23] II. Documents in the Nature of Pleadings and
Procedural Rulings thereon

Document No.	Description
62	Order of this Commission dated January 29, 1953 convening hearing pursuant to Section 11 (b) (1), in the matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., Respondents, File No. 59-100, and Electric Power & Light Corporation, File No. 54-139 (Public Utility Holding Company Act of 1935).
63	Post Office Return Receipt No. 812868 showing delivery on February 9, 1953 of order of this Commission dated January 29, 1953 on the Louisiana Public Service Commission.
64	Affidavit and statement of the Mayor and Members of the Commission Council of the City of New Orleans, filed February 16, 1953, setting forth position of City of New Orleans with regard to combined operation of New Orleans Public Service, Inc., together with letter of transmittal requesting affidavit and exhibits be received as part of record of proceedings.
65	Answer filed February 17, 1953 by Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. to order of the Commission dated January 29, 1953.
66	Letter dated February 24, 1953 from Monroe & Lemann addressed to and received in this Commission February 26, 1953 giving opinion, in answer to request of counsel for Division of Public Utilities, as to what the requirements of mortgage are as to application of proceeds from sales of property if required by Holding Company Act.
[24]	Letter dated March 11, 1953 from Middle South Utilities, Inc., addressed to and received in this Commission March 12, 1953 relative to certain supplemental information concerning Louisiana Power & Light Company.
68	Report filed March 11, 1954 by Mississippi Power & Light Company in compliance with order of March 20, 1953, that it has made contract to dispose of its water system in and about the City of Crystal Springs, Mississippi, by sale of such system to Union Water Service Company.
69	Commission minute memorandum dated March 17, 1954 stating Mississippi Power & Light Company had filed notice of intent pursuant to Rule U-44(c), and that no declaration need be filed with respect to the proposed sale.

Document No.	Description
70	Document entitled, "Statement of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, and Mississippi Power & Light Company regarding compliance with Commission's order, and application of Middle South Utilities, Inc. and Louisiana Power & Light Company for extension of time," filed March 19, 1954.
71	Document entitled, Amendment of Statement of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, and Mississippi Power & Light Company, regarding compliance with Commission's order, and application of Middle South Utilities, Inc. and Louisiana Power & Light Company for extension of time," filed April 7, 1954.
[25]	
72	Document entitled, "Amendment No. 2 of Statement of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, and Mississippi Power & Light Company, regarding compliance with Commission's order, and application of Middle South Utilities, Inc. and Louisiana Power & Light Company for extension of time," filed April 12, 1954.
73	Certificate of notification filed April 26, 1954 by Middle South Utilities, Inc.
74	Order of this Commission dated April 28, 1954 granting extension of time within which to comply with requirements of order issued pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935. (59-100 and 54-139)
75	Application or declaration on Form U-1 filed November 10, 1954 by Louisiana Power & Light Company and Louisiana Gas Service Corporation, pursuant to the Public Utility Holding Company Act of 1935 (File No. 70-3315).
76	Amendments filed November 12, 1954, December 10, 1954 and June 24, 1955 to Application or declaration on Form U-1 filed November 10, 1954 by Louisiana Power & Light Company and Louisiana Gas Service Corporation, pursuant to the Public Utility Holding Company Act of 1935. (Note: Amendment filed November 12, 1954 is also listed as Application or declaration-File No. 31-620) Doc. No. 77.
[26]	
77	Application or declaration filed November 12, 1954 by Louisiana Power & Light Company and Louisiana Gas Service Corporation, pursuant to the Public Utility Holding Company Act of 1935 (File No. 31-620). (Note: This is also filed as amendment to Form U-1 (70-3315) Doc. No. 76.
78	Notice of this Commission dated December 13, 1954 of filing regarding the transfer to recently organized subsidiary company of non-electric properties in consideration of cash and common stock of subsidiary company, the issuance and private sale of mortgage bonds by said subsidiary and appli-

Document
No.

Description

- cation by parent for an exemption from the Act as a temporary holding company, in the matter of Louisiana Power & Light Company and Louisiana Gas Service Corporation (File No. 70-3315), and Louisiana Power & Light Company (File No. 31-620).
79. Telegram dated December 22, 1954 from Louisiana Public Service Commission addressed to and received in this Commission December 23, 1954 requesting that public hearing be ordered in the matter of Louisiana Power and Light Company and Louisiana Gas Service Corporation, File No. 70-3315 and 31-620, and that record be reopened in the matter of Louisiana Power & Light Company, File Nos. 59-100 and 54-139.
- [27] 80. Application filed by Louisiana Public Service Commission on December 27, 1954 that Commission direct hearing be held in the matters bearing File Nos. 70-3315 and 31-620, that matters bearing File Nos. 59-100 and 54-139 be re-opened and that Louisiana Public Service Commission be granted opportunity to be heard.
- 80 a. Supplemental petition filed January 3, 1955 by Louisiana Public Service Commission reiterating allegations of its petition filed December 23, 1954 and adding further allegations. (File Nos. 59-100, 54-139, 70-3315 and 31-620).
81. Commission minute memorandum dated January 21, 1955 stating Commission determined that before ruling on petition of Louisiana Public Service Commission for hearing in the matter of Louisiana Power & Light Company et al. (File Nos. 70-3315 and 31-620) and for reopening of proceedings in the matter of Electric Power & Light Corporation, File No. 54-139 and Middle South Utilities, Inc. (File No. 59-100), Commission would desire more complete understanding of basis for petition in the form of an offer of proof with supporting brief.
82. Letter dated January 21, 1955 from this Commission addressed to Clayton W. Coleman, Secretary, Louisiana Public Service Commission, (cc: R. N. Salvant, Secy., Louisiana Power & Light Company, and H. F. Sanders, Secretary, Middle South Utilities, Inc.), advising that Commission will entertain offer of proof and brief if filed on or before March 1, 1955 and that Division of Corporate Regulation, Louisiana Power & Light Company and Middle South Utilities, Inc., may submit briefs on or before March 31, 1955 in support of or in opposition to petition of Louisiana Public Service Commission, and that oral argument would be heard March 28, 1955.
- [28] 83. Letter dated February 7, 1955 from Julius F. Hotard, clerk, City of Gretna, Louisiana, addressed to and received in this Commission February 10, 1955, enclosing resolution adopted by Mayor and Board of Aldermen on February 1, 1955, that the petition of Louisiana Public Service Commission be seriously considered by the Securities and Exchange Commission

Document
No.

Description

- [29]
- 84 Letter dated February 10, 1955 from Robert F. Kenion, Governor, State of Louisiana, addressed to and received in this Commission February 14, 1955 asking that petition of Louisiana Public Service Commission seeking reconsideration of Securities and Exchange Commission orders be given favorable consideration.
 - 85 Letter dated February 14, 1955 from the Louisiana Public Service Commission addressed to and received in this Commission February 16, 1955 requesting an extension of time within which to file offer of proof.
 - 86 Commission minute memorandum dated February 16, 1955 directing the filing as part of record of pending proceedings in respect of Louisiana Power & Light Company, et al. (File Nos. 70-3315 and 31-620) of resolution adopted and approved on February, 1, 1955 by Board of Aldermen of the City of Gretna, Louisiana, in support of petition filed by Louisiana Public Service Commission for hearing on File Nos. 70-3315 and 31-620 and reopening of record on File Nos. 54-139 and 59-100.
 - 87 Document entitled, "Resolution—A resolution requesting the Securities and Exchange Commission to permit Louisiana Power and Light Co. to obtain ownership of their gas properties" filed February 18, 1955 by Alon L. Wall, Secretary of Police Jury of Tangipahoa Parish Louisiana.
 - 88 Commission minute memorandum dated February 25, 1955 stating Commission approved request of Louisiana Public Service Commission for an extension to May 2, 1955 of time for filing its offer of proof and supporting brief; briefs in support or opposition to petition of Louisiana Public Service Commission were to be filed on or before May 23, 1955, and matter was scheduled for oral argument on June 1, 1955.
 - 89 Telegram dated February 25, 1955 from this Commission addressed to C. W. Coleman, Secretary, Louisiana Public Service Commission, advising that time for filing offer of proof and brief by Louisiana Public Service Commission has been extended, and that time for filing of briefs by other parties has also been extended.
 - 90 Notice of appearance and petition for relief filed April 27, 1955 on behalf of the Police Jury of the Parish of Jefferson, Louisiana.
 - 91 Document entitled, "Offer of proof" (with exhibits thereto) filed May 2, 1955 by Louisiana Public Service Commission.
 - [30] 92 Document entitled, "Brief on behalf of Louisiana Public Service Commission" filed May 2, 1955.
 - 93 Notice of this Commission dated May 16, 1955 of filing of petition to open record in previous proceeding and to hold public hearings in respect of opened record and on pending applications and declarations, in the matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana

Document
No.

Description

- Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., Respondents (File No. 59-100), Electric Power & Light Corporation (File No. 54-139), Louisiana Power & Light Company and Louisiana Gas Corporation (File No. 70-3315), and Louisiana Power and Light Company (File No. 31-620).
- 94 Letter dated May 31, 1955 from Jerome M. Alper addressed to and received in this Commission June 1, 1955 requesting an extension of time to submit a statement of the position of Jefferson Parish in regard to the petition of the Louisiana Commission.
- 95 Commission minute memorandum dated June 9, 1955 stating Commission extended time for filing of briefs and postponed oral argument.
- 96 Letters dated June 9, 1955 from this Commission addressed to Monroe & Lemann, Jerome M. Alper, Reid and Priest, McDonald & Buchler, and Clayton Coleman, advising Commission has extended date for filing briefs and for oral argument.
- [31] 97 Telegram dated June 23, 1955 from Louisiana Power & Light Company addressed to and received in this Commission June 24, 1955 requesting sixty day extension of time for filing statement of position and sixty day postponement of date for oral argument.
- 98 Telegram dated June 23, 1955 from Louisiana Public Service Commission addressed to and received in this Commission June 24, 1955 advising Louisiana Public Service Commission has no objection to granting of extension of time requested by Louisiana Power and Light Company.
- 99 Commission minute memorandum dated June 24, 1955 denying further extensions of time for filing statements of position and supporting briefs or postponements of the oral argument.
- 100 Letters dated June 27, 1955 from this Commission addressed to Clayton W. Coleman, Secy., Public Service Commission of Louisiana, Paul Canaday, Vice Pres., Middle South Utilities, Inc., Jerome Alper, and W. O. Turner, Pres., Louisiana Power & Light Company, informing that Commission was not granting any further extension of time for filing Statement of Position and supporting brief.
- 101 Document entitled, "Reply of Jefferson Parish to offer of proof and supporting brief" filed June 29, 1955, together with letter of transmittal containing request for waiver of 60-page rule if this document considered brief.
- [32] 102 Document entitled, "Statement of position and brief in support thereof submitted by the Division of Corporate Regulation" filed June 29, 1955.
- 103 Document entitled, "Statement of position of Louisiana Power & Light Company" filed June 29, 1955.

Document No.	Description
104	Commission minute memorandum dated July 1, 1955 directing postponement of oral argument from July 6 to July 7, 1955, 10 A. M.; authorizing acceptance, for filing as part of record, of "Reply of Jefferson Parish to Offer of Proof and Supporting Brief" which document exceeded 60-page limitation prescribed by Rules of practice.
105	Telegrams dated July 1, 1955 from this Commission addressed to Clayton W. Coleman, Secy., Public Service Commission of Louisiana, and W. O. Turner, Pres., Louisiana Power & Light Company, advising oral argument postponed to July 7, 1955, 10 A. M.
106	Commission minute memorandum dated July 5, 1955 directing that oral argument be postponed from 10:00 a. m. to 2:30 p.m., July 7, 1955.
107	Telegrams dated July 5, 1955 from this Commission addressed to W. O. Turner, Pres., Louisiana Power & Light Company, and Clayton W. Coleman, Secy., Public Service Commission of Louisiana, advising oral argument postponed until 2:30 p. m., July 7, 1955.
108	Transcripts of oral argument held July 7, 1955.
109	Commission minute memorandum dated July 7, 1955 stating oral argument held and concluded and matter taken under advisement by Commission.

[33]

III. Orders, Findings and Opinions.

- 110 Findings and opinion and order of this Commission dated March 20, 1953 under Section 11 (b) (1) requiring divestment by registered holding company of certain non-retainable properties, and order releasing jurisdiction, in the matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc., Respondents (File No. 59-100), and Electric Power & Light Corporation (File No. 54-139).
- 111 Findings and opinion and order of this Commission dated September 13, 1955 denying petition to reopen prior proceedings and modify order, in the matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company and New Orleans Public Service, Inc., Respondents, File No. 59-100, Electric Power & Light Corporation, File No. 54-139, Louisiana Power & Light Company and Louisiana Gas Service Corporation, File No. 70-3315 and Louisiana Power & Light Company, File No. 31-620.

By the Commission:

ORVAL L. DuBOIS,
(Orval L. DuBois),
Secretary.

(Seal)

Date: November 8, 1955.

[34] In United States Court of Appeals for the Fifth Circuit.

ATTESTATION.—November 29, 1955.

(Title Omitted)

I hereby attest that the attached are full, true and complete copies of Documents Nos. 62, 65, 74, 79, 80, 80 a., 81, 82, 93, 110 and 111 as heretofore set forth in the "Certificate Listing and Describing Record in Proceedings before the Securities and Exchange Commission" dated November 8, 1955, as heretofore filed in this Court in the above case.

JAMES HINDLE,
(James Hindle),
Records Officer, Securities and
Exchange Commission.

35. Before the Securities and Exchange Commission
(Holding Company Act Release No. 11687)

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT
COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW
ORLEANS PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

Order convening hearing pursuant to Section 11 (b) (1)

January 29, 1953

On March 7, 1949, the Commission issued its Order (Holding Company Act Release No. 8906) approving, under Section 11 (e) of the Public Utility Holding Company Act of 1935 ("Act"), a plan for the dissolution of Electric Power & Light Corporation ("Electric"), a registered holding company.

Subsequent to approval by the United States District Court, the plan was consummated in May and July 1949. That plan, which provided for the dissolution of Electric and the retirement of its outstanding securities through the exchange of certain other securities, also provided for the creation of a new holding company, Middle South Utilities, Inc. ("Middle South"), which acquired all of the common stocks of Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi") and 95.2% of the common stock of New Orleans Public Service, Inc. ("New Orleans"). Each of these companies owned electric utility assets and gas utility assets and in addition, some

of these companies owned non-utility assets. Middle South also acquired from Electric all of the securities of Gentilly Development Company ("Gentilly"), a non-utility land company.

The Commission in its Findings and Opinion upon the plan (Holding Company Act Release No. 8889) stated that it could approve the creation of Middle South as a holding company although it was not prepared at that time to make definitive findings under Section 11 of the Act with respect to the integrated nature of the electric properties or the retainability of the non-electric properties. The Commission said:

"The record indicates that the electric properties of the four operating companies are interconnected and that since 1930 they have been constructed and operated on a systemwide basis. This system has a common dispatcher and an operating committee which forecasts the loads, prepares over-all schedules and gives general directions to the dispatcher.¹⁰ The construction requirements of the companies are formulated on a system rather than on an individual basis." Thus, the determination of sites and ownership of generating facilities has been on the basis of the most economical and efficient installation from the viewpoint of the system's load requirements rather than the requirements of the individual companies.

In its Order of March 7, 1949, the Commission reserved jurisdiction to institute and conduct such further proceedings under Section 11 (b) of the Act with respect to Middle South as may be necessary or appropriate.

Since the organization of Middle South, some of its subsidiary companies have disposed of various assets and Gentilly has disposed of its lands and now holds only cash. At the present time, Arkansas owns electric utility assets and steam properties; Louisiana owns electric utility assets, gas utility assets, and water properties; Mississippi owns electric utility assets and water properties; and New Orleans owns electric utility assets, gas utility assets, and transportation properties.

¹⁰ While the operating committee is composed of representatives from each of the operating companies, the nature of their functions is such as to make them representatives of the system rather than of the individual companies.

It appearing to the Commission that a further hearing should be held for the purpose of determining whether the jurisdiction heretofore reserved should be released, or
38 whether any further action should be taken by Middle South to bring itself into conformity with the standards of Section 11 (b) (1) of the Act:

It Is Ordered pursuant to the applicable provisions of the Act and the Rules thereunder that a hearing be held on February 19, 1953 at the office of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., for the purpose of determining whether the jurisdiction heretofore reserved should be released or, in the alternative, what further action should be required to be taken by Middle South and its subsidiary companies to bring them into compliance with Section 11 (b) (1) of the Act. On such day the hearing room clerk will advise as to the room in which such hearing is to be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding shall file with the Commission on or before February 17, 1953, a request relative thereto as provided in Rule XVII of the Commission's Rules of Practice.

It Is Further Ordered that William W. Swift or any other officer or officers of the Commission designated by it for that purpose shall preside at such hearing. The officer or officers so designated are hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of the Act and to a hearing officer under the Commission's Rules of Practice.

The Division of Public Utilities having advised the Commission that, upon the basis of its preliminary examination of the record heretofore made in the Section 11 (e) plan proceedings of Electric, that the following matters and questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

- 39 1. Whether the jurisdiction heretofore reserved in the order of March 7, 1949 with respect to the Middle South holding

company system under Section 11 (b) of the Act should be released.

2. Whether the Commission's *prima facie* determination that the electric utility assets of the Middle South holding company system constitute an integrated electric utility system as defined in Section 2 (a) (29) (A) of the Act and constitute its principal public-utility system as set forth in Section 11 (b) (1) of the Act should be made definitive and final.

3. Whether Middle South and Louisiana should be required to take action to dispose of the gas utility assets and non-utility assets of Louisiana and, if so, what terms and conditions should be imposed in connection therewith.

4. What further action should be required at this time of the respondents under Section 11 (b) (1) of the Act.

It Is Further Ordered that such respondents shall file with the Secretary of the Commission on or before February 17, 1953, their joint or several answers in the form prescribed by Rule U-25 under the Act, such answers to be directed to the issues herein set forth.

40 It Is Further Ordered that the Secretary of the Commission shall serve notice of the aforesaid hearing by mailing a copy of this notice and order by registered mail to the respondents named herein and to the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Commissioner of Public Utilities of the City of New Orleans, and that additional notice be given to all other persons by publication of this notice and order in the Federal Register and by general release of this Commission with respect to this notice and order to be distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

41 Before the Securities and Exchange Commission

[Title omitted.]

Answer

Received February 17, 1953

The respondents hereby join, as set forth below, in this Answer to the Order Convening Hearing Pursuant to Section 11 which was issued by the Securities and Exchange Commission in this proceeding on January 29, 1953 (Holding Company Act Release No. 11687).

42 The respondents respectively join in the several parts of this Answer as follows: Middle South* joins in all parts; Arkansas, in Parts I and II; Louisiana, in Parts I and III; Mississippi, in Parts I and IV; and New Orleans in Parts I and V.

I

MIDDLE SOUTH HAS AN INTEGRATED ELECTRIC SYSTEM

The electric utility properties owned and operated by Arkansas, Louisiana, Mississippi and New Orleans constitute a public utility system within the meaning of Section 2 (a) (29) (A) of the Act and also constitute the principal system of Middle South and its subsidiaries. The *prima facie* determination by this Commission (Matter of Electric Power & Light Corporation, Holding Company Act Release No. 8889) that said electric utility assets of the Middle South holding company system constitute an integrated electric utility system as defined in Section 2 (a) (29) (A) of the Act and constitute the principal public utility system of Middle South as set forth in Section 11 (b) (1) of the Act, should be made definitive and final.

* In this Answer Middle South Utilities, Inc. will be called "Middle South"; Arkansas Power & Light Company will be called "Arkansas"; Louisiana Power & Light Company will be called "Louisiana"; Mississippi Power & Light Company will be called "Mississippi"; and New Orleans Public Service Inc. will be called "New Orleans." The Public Utility Holding Company Act of 1935 will be called the "Act".

ARKANSAS

At the time of the closing of the record in the second above-entitled proceeding, Arkansas owned gas distribution properties, a transportation subsidiary and minor steam properties, as well as electric utility properties.

Arkansas applied to this Commission for permission to sell its gas distribution properties, and a sale was consummated in October, 1950 (Matter of Middle South Utilities, Inc. et al., Holding Company Act Release No. 10077).

Pursuant to an application to this Commission, the stock of the transportation subsidiary was disposed of in December, 1950 (Matter of Arkansas Power & Light Company, Holding Company Act Release No. 10300).

For a number of years Arkansas has been making efforts to dispose of the minor steam business which it conducts in Little Rock. Thus far, however, Arkansas has been unable to dispose of the steam business. Arkansas intends to continue its efforts in this direction.

III

LOUISIANA

At the time of the closing of the record in the second above-entitled proceeding, Louisiana had electric properties, gas properties and transportation properties. Louisiana
44 has since disposed of its transportation properties. In addition, in connection with the acquisition of certain electric utility assets, Louisiana acquired two minor water properties and one small ice plant. It has since disposed of one of the water properties and of the ice plant.

The remaining water property, which had to be acquired with an electric utility property, constitutes a minor operation and is believed to be de minimis.

With respect to the gas properties of Louisiana, they cannot be operated independently without the loss of substantial economies; they are all located in the single State of Louisiana; they are not so large, when combined with the Middle South system and considering the state of the art and the area affected, as to

impair the advantages of localized management, efficient operation, or the effectiveness of regulation; and they are reasonably incidental and economically necessary and appropriate to the operations of electric properties in the Middle South system.

IV

MISSISSIPPI

At the time of the closing of the record in the second above-entitled proceeding, Mississippi had electric utility properties, gas properties and water properties. Pursuant to an order on an application by Mississippi to this Commission, Mississippi disposed of its gas properties as of December 31, 1951 (Matter of Middle South Utilities, Inc., et al., Holding Company Act Release No. 11019). Mississippi has been making efforts
45 to dispose of the water properties and will continue to do so.

V

NEW ORLEANS

At the time of the closing of the record in the second above-entitled proceeding, New Orleans owned and it still owns, electric utility properties, gas utility properties and transportation properties. These properties of New Orleans are operated under a unitary franchise granted by the City of New Orleans under which the City has the right to require that the three types of service be rendered together by the holder of the franchise. The City has taken the position that it will insist upon the enforcement of its rights in this regard.

Wherefore, the respondents pray that this Commission issue an appropriate order or orders making definitive and final its preliminary finding that the electric utility properties operated by Arkansas, Louisiana, Mississippi and New Orleans constitute an integrated electric utility system as defined in Section 2 (a) (29) (A) of the Act and constitute the principal public utility system of Middle South as set forth in Section 11 (b) (1) of the Act, and releasing the jurisdiction which was reserved by this Commission in its order of March 7, 1949, approving the

plan of reorganization of Electric Power & Light Corporation
(Holding Company Act Release No. 8906).

46 Dated: February 16, 1953.

MIDDLE SOUTH UTILITIES, INC.,

By (S.) E. H. DIXON,

President.

ARKANSAS POWER & LIGHT COMPANY,

By (S.) R. E. RITCHIE,

President.

LOUISIANA POWER & LIGHT COMPANY,

By (S.) W. O. TURNER,

President.

MISSISSIPPI POWER & LIGHT COMPANY,

By (S.) REX I. BROWN,

President.

NEW ORLEANS PUBLIC SERVICE INC.,

By (S.) GEORGE S. DINWIDDIE,

President.

Duly sworn to by E. H. Dixon, R. E. Ritchie, W. O. Turner,
et al.

Jurats omitted in printing. (All in italics.)

49 Before the Securities and Exchange Commission

*Order granting extension of time within which to comply with
requirements of order issued pursuant to Section 11 (b) (1)
of the Public Utility Holding Company Act of 1935*

April 28, 1954

(Holding Company Act Release No. 12475)

[Title omitted.]

50 The Commission having on January 29, 1953 instituted proceedings (File No. 59-100) pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("Act"), directed to Middle South Utilities Inc. ("Middle South"), a registered holding company, and its sub-

sidiaries, Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service, Inc., to determine the action necessary to be taken by Middle South (as the successor corporation to Electric Power & Light Corporation, a former registered holding company) and by Middle South's subsidiaries to comply with the requirements of Section 11 (b) (1) of the Act; and

The Commission having, on March 20, 1953, issued its Findings and Opinion and Order (Holding Company Act Release No. 11782) in which it found that the non-electric properties, consisting of the gas and water properties of Louisiana, the steam properties of Arkansas, and the water properties of Mississippi, could not be retained by Middle South and its subsidiaries under the standards of Section 11 (b) (1) of the Act, and in which it directed, pursuant to Section 11 (b) (1) of the Act, that "Middle South and its subsidiaries dispose or cause the disposition of their direct and indirect ownership in the non-electric properties owned by Arkansas, Louisiana and Mississippi in any appropriate manner not in contravention of the applicable provisions of the Act or the Rules and Regulations promulgated thereunder;" and

Middle South, Arkansas, Louisiana, and Mississippi having filed an application pursuant to Section 11 (c) of the Act requesting that the Commission issue an order extending for a period of one year from March 20, 1954, the time within which the applicants shall have to comply with its Order dated March 20, 1953; and

The Commission having examined said application and the reasons advanced in support of such request, and it appearing therefrom that Middle South and its subsidiaries have been unable in the exercise of due diligence to dispose of the non-electric properties owned by Arkansas, Louisiana, and Mississippi within one year from the date of said Order, as prescribed by the provisions of Section 11 (c) of the Act, except as to certain water properties owned by Mississippi and located at Crystal Springs, Mississippi; and the Commission finding that the requested extension of time is necessary in the public interest and the interest of investors and consumers:

It Is Ordered, pursuant to Section 11 (c) of the Act, that Middle South and its subsidiaries, Arkansas, Louisiana, and Mississippi, be, and they hereby are, granted an additional period of one year from March 20, 1954, within which to comply with the said Order dated March 20, 1953 herein issued.

By the Commission.

[SEAL]

ORVAL L. DUBois,
Secretary.

Before the Securities and Exchange Commission

Telegram

Received December 23, 1954

RB4 81 NS A 532

'54 Dec 22 PM 8.04

NS BRA611 Long NL PD Baton Rouge La 22

Hon. ORVAL DUBois,

*Secretary, Securities and Exchange Commission,
Wash., D. C.*

52 This Commission respectfully requests that Public Hearing be ordered in the matter of Louisiana Power and Light Company and Louisiana Gas Service Corporation your file number seventy dash three three one five and thirty one dash six twenty. Also respectfully request that your file number fifty nine dash one hundred and fifty four dash one three nine Louisiana Power & Light Company be reopened and set for further hearing at the same time for purpose of receiving additional evidence primarily with respect to the increased cost burden which would be imposed upon the operation of the natural gas properties of Louisiana Power and Light Company if such gas properties are required to be operated separately from the electric properties. Written application for such reopening being forwarded by air mail.

LOUISIANA PUBLIC SERVICE COMMISSION.

90 S. E. C. VS. LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

53 Before the Securities and Exchange Commission

**IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC.,
ARKANSAS POWER & LIGHT COMPANY, LOUISIANA POWER &
LIGHT COMPANY, MISSISSIPPI POWER & LIGHT COMPANY,
NEW ORLEANS PUBLIC SERVICE INC., RESPONDENTS**

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

**IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY,
LOUISIANA GAS SERVICE CORPORATION**

(File No. 70-3315)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF LOUISIANA POWER & LIGHT COMPANY

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

*Application by Louisiana Public Service Commission that
hearing be held, etc.*

December 23, 1954

The petition of Louisiana Public Service Commission,
a regulatory administrative tribunal created and
54 existing by virtue of the Constitution and laws of the
State of Louisiana, respectfully shows:

1. In the above entitled proceedings bearing file numbers 59-100 and 54-139, findings and opinion were issued by this Honorable Commission, after hearings, concluding that Louisiana Power & Light Company, a respondent in such proceedings, had failed to establish that separation of the Louisiana gas properties owned by it would result in the loss of substantial economies such as would justify the retention of its gas prop-

erties together with its electric properties and an order was issued in accordance with the said opinion and findings.

2. That the said respondent, Louisiana Power & Light Company, is a utility under the jurisdiction of the Louisiana Public Service Commission, which Commission did not participate in the said proceedings, and that the Louisiana Public Service Commission is charged by law with the duty of regulating the said utility in the public interest.

3. That the petitioner believes and alleges that the hearings had in the above matters, particularly the matter bearing File No. 59-100, did not elicit the existing facts and information which would have demonstrated that the indicated divestiture of gas properties by Louisiana Power & Light Company is not in the public interest; that the retention of these gas properties by Louisiana Power & Light Company would bring about substantial economies of such a nature as to justify the retention of such properties; that the separation of such properties would lead to increased cost of gas to the consumers of gas in the State of Louisiana and should not be consummated; and that an opportunity should be afforded petitioner by the reopening of these matters and the record therein for the reception of further evidence on the questions therein involved and relating to Louisiana Power & Light Company.

4. That in order to afford such an opportunity it is necessary that the above-entitled matters bearing File Numbers 70-3315 and 31-620 be set down for hearing; and petitioner believes and respectfully suggests that the matters bearing File Numbers 59-100, 54-139, 70-3315 and 31-620 should be consolidated for the purposes of hearing and consideration by this Honorable Commission.

Wherefore, the Louisiana Public Service Commission respectfully prays that this Honorable Commission direct that a hearing be held in the matters bearing File Numbers 70-3315 and 31-620, and that the matters bearing File Numbers 59-100 and 54-139 be reopened; and that the Louisiana Public Service Commission be granted an opportunity to be heard in connection therewith and to offer evidence therein. The Louisiana Public Service Commission further prays for such other and

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further relief as may be found by this Honorable Commission to be appropriate in the premises.

**LOUISIANA PUBLIC SERVICE
COMMISSION,
By CLAYTON W. COLEMAN,
*Secretary.***

56 By Order of the Commission: Baton Rouge, Louisiana, December 23, 1954.

Received Dec. 27, 1954.

Duly sworn to by Clayton W. Coleman.

Jurat omitted in printing. (All in italics.)

57 Before the Securities and Exchange Commission

[Title omitted.]

Supplemental petition

Received Jan. 3, 1955

The supplemental petition of Louisiana Public Service Commission, a regulatory administrative tribunal
58 created and existing by virtue of the Constitution and laws of the State of Louisiana, respectfully shows:

1. That it reiterates and reavers the allegations of its original petition filed herein on December 23, 1954, and further alleges and states as follows:
2. That the Louisiana Power & Light Company, respondent, has consented to the reopening of the proceedings in File Nos. 59-100 and 54-139 insofar as concerns the said respondent, and the evidence of such consent is hereto annexed and made part hereof as Exhibit A.
3. That since the final hearings had in File Nos. 59-100 and 54-139 and the subsequent issuance of order herein, there have occurred substantial and important changes in the conditions and facts upon which the findings and order of this Honorable Commission were predicated in said proceedings, of such a character as, in petitioner's opinion, would have led this Honorable Commission to reach a different and contrary conclu-

sion in these proceedings with regard to the divestiture by Louisiana Power & Light Company of its gas properties, and petitioner respectfully suggests that in the public interest evidence of such changes should be resolved and considered.

Wherefore, the Louisiana Public Service Commission respectfully prays that this Honorable Commission direct that a hearing be held in the matters bearing File Numbers 70-3315 and 31-620, and that the matters bearing File Numbers 59-100 and 54-139 be reopened; and that the Louisiana Public Service Commission be granted an opportunity to be heard in connection therewith and to offer evidence therein. The Louisiana Public Service Commission further prays for such other and further relief as may be found by this Honorable Commission to be appropriate in the premises.

By Order of the Commission: Baton Rouge, Louisiana,
December 31, 1954.

LOUISIANA PUBLIC SERVICE
COMMISSION,
By C. W. COLEMAN,

Secretary.

Duly sworn to by Clayton W. Coleman.

Jurat omitted in printing. (All in italics.)

60 *Exhibit A to supplemental petition*
 Received Jan. 3, 1955
The Louisiana Power & Light Company
142 Delaronde Street
New Orleans 14, Louisiana

DECEMBER 31, 1954.

SECURITIES & EXCHANGE COMMISSION,
Washington, D. C.

GENTLEMEN: We have been advised that Louisiana Public Service Commission has petitioned the Commission to reopen the proceedings in Files 59-100 and 54-139 insofar as the disposition by this company of its gas properties is concerned and has requested our consent to such reopening. This will

advise you that this company has no objection to such reopening of such proceedings and this will evidence our consent to such action by you.

Your very truly,

(Signed) W. O. Turner,
W. O. TURNER,
President.

WOT:lr

61 (Copy of original which has been mailed directly to
Securities and Exchange Commission, Washington,
D. C.)

Before the Securities and Exchange Commission

Memorandum to Docket Section

January 21, 1955

RE: LOUISIANA POWER & LIGHT COMPANY, ET AL. (FILES 70-
3315 AND 31-620), ELECTRIC POWER & LIGHT CORPORATION
(FILE 54-139), MIDDLE SOUTH UTILITIES, INC. (FILE 59-100)

The Louisiana Public Service Commission having filed a petition for a hearing in the proceedings under the Public Utility Holding Company Act of 1935 pending in respect of Louisiana Power & Light Company, et al. (Files 70-3315 and 31-620), and for a reopening of the record in the proceedings in the matter of Electric Power & Light Corporation (File 54-139) and Middle South Utilities, Inc. (File 59-100); and the Commission having given due consideration to the matter; the Commission determined that, before ruling on the petition to reopen the record, it should have a more complete understanding of the basis for the petition in the form of an offer of proof with a supporting brief.

Accordingly, the Commission approved a letter to Mr. Clayton W. Coleman, Secretary of the Louisiana Public Service Commission, calling for the filing of such offer and brief on or prior to March 1, 1955. The letter to Mr. Coleman further suggested that a copy of any such offer of proof and supporting brief be supplied to Louisiana Power & Light Company

62 and Middle South Utilities, Inc., and the letter fixed March 21, 1955, as the date on which briefs in support of or in opposition to the petition might be filed by the Division of Corporate Regulation, Louisiana Power, and Middle South. Oral argument was to be heard on March 28, 1955, at 10:00 A. M.

ORVAL L. DUBoIS,
(O. D.),

Secretary.

Before the Securities and Exchange Commission

JANUARY 21, 1955.

OFFICE OF THE SECRETARY,

MR. CLAYTON W. COLEMAN, *Secretary,*
Louisiana Public Service Commission,
Baton Rouge 4, Louisiana.

RE: LOUISIANA POWER & LIGHT Co., ET AL., FILE Nos. 70-3315,
31-620, 59-100, 54-139

DEAR Mr. CLAYTON: After giving preliminary consideration to your petition for a reopening of the record and reconsideration by the Securities and Exchange Commission of its 1953 order of divestment directed against Louisiana Power & Light, the Commission decided that before making a final determination of whether to order the record reopened, it should have a more complete understanding of the basis for your petition in the form of an offer of proof with a supporting brief. Accordingly, I have been directed to advise you that the Commission will entertain such an offer of proof and brief if filed on or prior to March 1, 1955. The offer should set out in reasonable detail the facts which you would seek to prove to establish changed circumstances supporting a modification of the order and any other facts which you deem relevant and will seek to establish. In the brief you can submit your arguments for reopening the record. You should supply a copy of any such offer of proof and supporting brief to Louisiana Power & Light Company and Middle South Utilities, Inc.

On or before March 21, 1955, the Division of Corporate Reg-

96 S. E. C. VS. LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

ulation, the Louisiana Power & Light Company, and Middle South Utilities, Inc. may submit briefs in support of or in opposition to the petition. Oral argument will be heard at 10:00 o'clock A. M. on March 28, 1955.

Copies of this letter are being sent to the Louisiana Power & Light Company and Middle South Utilities, Inc.

Very truly yours,

ORVAL L. DUBois,
Secretary.

RN Hislop
RAMcDowell/ms
1/20/55

cc: R. N. Salvant, Secretary
Louisiana Power & Light Company,
142 Delaronde Street,
New Orleans 14, Louisiana

H. F. Sanders, Secretary,
Middle South Utilities, Inc.,
Two Rector Street,
New York 6, New York.

64 Before the Securities and Exchange Commission

Notice of filing of petition to open record in previous proceeding and to hold public hearings in respect of opened record and on pending applications and declarations

May 16, 1955

(Holding Company Act Release No. 12892)

[Title omitted.]

65 Notice Is Hereby Given that Louisiana Public Service Commission ("Public Service Commission") has filed a petition, supplemental petition, offer of proof, and brief requesting this Commission to open the record in the consolidated proceeding "In the Matter of Middle South Utilities, Inc., et al., File No. 59-100" and "In the Matter of Electric Power &

Light Corporation, File No. 54-139" and to hold a public hearing thereon and also in respect of pending applications-declarations of Louisiana Power & Light Company ("Louisiana Power"), a public utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and a pending application-declaration of Louisiana Gas Service Corporation ("Louisiana Gas"), a subsidiary of Louisiana Power, these applications-declarations having been filed with this Commission on November 10, 1954 and having been described in a Notice of Filing heretofore issued by the Commission on December 13, 1954 (Holding Company Act Release No. 12740).

66

I

BACKGROUND

On January 29, 1953, this Commission issued a Notice and Order directed, inter alia, to Middle South and Louisiana Power, concerned with a public hearing, pursuant to Section 11 (b) (1) and Section 11 (e) of the Act (File Nos. 59-100 and 54-139). Among the issues enumerated in that Notice and Order as being the subject matter of the hearing was the following:

"Whether Middle South and Louisiana [Power] should be required to take action to dispose of the gas utility assets and non-utility assets of Louisiana [Power] and, if so, what terms and condition should be imposed in connection therewith."

A copy of this Notice and Order for hearing was served on Public Service Commission by registered mail.

The Order convening the hearing directed Respondents to answer the allegations set forth in the Notice and Order. In their answer, Middle South and Louisiana Power claimed that the gas properties of Louisiana were retainable as a public-utility system additional to the integrated electric utility system of Middle South. Neither the Public Service Commission nor the representative of any other public body or of public security holders appeared at the public hearing with respect to the retainability of the gas properties of Louisiana Power. Briefs and oral argument before this Commission were waived by all parties.

67 On March 20, 1953 this Commission issued its Findings and Opinion and Order in which it was concluded, among other things, that Louisiana Power and Middle South should divest themselves of all non-electric properties. The Commission stated:

"The general framework of the Act as well as its legislative history demonstrates the intention of permitting the retention of additional systems only where such additional system is so small that it could not operate economically under separate management. (Citing Cong. Report on S. 2796, H. R. No. 1903, 74th Cong., 1st Sess. p. 71; 79 Cong. Rec. 14479 (Aug. 24, 1935) and *The North American Company v. S. E. C.*, 327 U.S. 686, 696-697 (1946).) It is clear that the gas properties of Louisiana (Power) are capable of effective and economical operation as a separate entity, and are, in fact, larger than many completely independent systems. We note in this connection that two of Louisiana (Power's) sister companies, Arkansas and Mississippi, have disposed of their gas properties which are now independently operated.

"We have previously pointed out that the separation of electric and gas utility systems from common control frequently results in some increase in operating expenses due to the elimination of certain types of savings which common control has permitted. (Citing Engineers Public Service Company, 12 S. E. C. 41 (1942); The Philadelphia Company, Holding Company Act Release No. 8242 (June 1, 1948); The North American Company, 11 S. E. C. 194 (1946).) However, the statutory criterion for retention stated in Section 11 (b) (1)

68 (A) of the Act is not whether there is some additional expense. For the loss of economies to be 'substantial' they must be 'important' in the sense that they are of such magnitude as to cause a serious economic impairment of the system. (Citing General Public Utilities Corporation, Holding Company Act Release No. 10982.) There is no evidence in this case to warrant the conclusion that separation of the gas and electric properties of Louisiana (Power) would cause the serious economic impairment of the gas system or that the gas properties could not operate effectively and efficiently under separate ownership."

The order directed " * * * Middle South and its subsidiary (to) dispose or cause the disposition of their direct or indirect ownership in the non-electric properties owned by * * * Louisiana (Power) * * * in any appropriate manner not in contravention of the applicable provisions of the Act or the Rules and Regulations promulgated thereunder; * * *" (Holding Company Act Release No. 11782.)

Thereafter, pursuant to an application of Louisiana Power, the Commission extended until March 20, 1955 the period of time by which Middle South and Louisiana Power were required to dispose of their interests in the non-electric properties of Louisiana Power.

As hereinbefore stated, on November 10, 1954 Louisiana Power and Louisiana Gas filed a joint application-declaration with this Commission proposing the divestment by Louisiana Power to Louisiana Gas of all the non-electric properties of Louisiana Power and the issuance of common stock and debt securities by Louisiana Gas. In this filing, Louisiana
69 Power also sought an order of this Commission declaring, pursuant to Section 3 (a) (4) of the Act, that Louisiana Power was only temporarily a holding company, the filing indicating that while no definitive program had at that time been developed in respect of the divestment of the common stock of Louisiana Gas by Louisiana Power it was its intention to effect the divestment within a period of 18 months from the date of acquisition.

This Commission on December 13, 1954 issued its Notice of Filing in respect of this joint application-declaration and notified any interested person that, no later than December 27, 1954, he could request the Commission in writing that a hearing be held on such matter stating the reasons for such request, the nature of his interest and the issues of fact or law raised by the joint filing which he desires to controvert. By telegram dated December 22, 1954 Public Service Commission requested a public hearing in this matter and, in addition thereto, asked that the Commission open the record in the prior proceedings which had resulted in the divestment order of March 20, 1953. Thereafter Public Service Commission filed a petition and supplemental petition containing, among other things, a consent

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on the part of Louisiana Power to a reopening of the record in the prior proceedings.

II

POSITION OF LOUISIANA PUBLIC SERVICE COMMISSION

Generally speaking, Public Service Commission states that all of the physical properties of Louisiana Power, both
70 gas and electric, are located in the State of Louisiana.

Public Service Commission further states that it is empowered to regulate and control public-utility companies, including the transfer of the ownership of the assets of such companies (a power asserted by General Order of that Commission adopted and published June 16, 1953), that "Louisiana State policy favors the retention of gas distribution systems by electric utilities," that fourteen of the fifteen Parishes of the State of Louisiana served by Louisiana Power and all of the thirty-one communities served have officially expressed themselves as favoring the retention of the gas properties by Louisiana Power, and that both the gas and electric consumers of Louisiana Power will best be served by the continued operation of both the gas and electric properties by Louisiana Power.

III

DESCRIPTION OF MATERIAL FILED BY LOUISIANA PUBLIC SERVICE COMMISSION IN SUPPORT OF ITS POSITION

All interested persons are referred to the petition, supplemental petition, offer of proof, exhibits attached thereto, and brief of Public Service Commission, which are on file in the office of this Commission. The pertinent portions of these documents may be summarized as follows:

The offer of proof outlines six general matters which Public Service Commission would propose to establish at a public hearing in these proceedings. These six items are concerned primarily with the following considerations: (i) on the basis of a separation study of Louisiana Power for the year 1954 prepared by the members of the staff of Public Service Commission which allegedly ". . . shows that the total additional cost of such separation to Louisiana (Power's) utility

customers would be \$957,000 of which \$684,337 would be additional cost to Louisiana (Power's) electric customers, (and) \$272,816 would represent additional cost to the non electric customers," the gas system of Louisiana Power cannot be operated as an independent system without the loss of substantial economies; (ii) the electric and gas systems of Louisiana Power are located entirely within the State of Louisiana; (iii) the continued combination of such systems will not impair the advantages of localized management, efficient operation or the effectiveness of regulation; (iv) no law of the State of Louisiana prohibits the joint ownership or operation of gas and electric utility assets; (v) the public interest and the interest of consumers will best be served by the continued joint operation by Louisiana Power of gas and electric utility assets, and (vi) it is the desire of all governmental agencies of the territory served by Louisiana Power (except Jefferson Parish) that the joint operation of these properties by Louisiana Power be continued.

The brief of Public Service Commission submitted in support of the offer of proof outlines five general propositions as follows: (a) Public Service Commission proposes to present facts and arguments not considered by this Commission at the hearing which resulted in its order dated March 20, 1953. These facts and arguments, generally speaking, are concerned with the separation study prepared by the staff of Public Service Commission in respect of the loss of economies hereinbefore referred to; information in respect of the difference in
72 interest rates between mortgage bonds sold by Louisiana

Power on October 19, 1954 resulting in a net cost of money of 3.11% per annum and the proposed debt securities of Louisiana Gas with a cost of money of 3.55% per annum; a comparison of the seasonal variations in the sales of gas and electric energy purporting to demonstrate that these variations tend to complement each other; a comparison of the operations of Louisiana Power with Arkansas Power & Light Company and Mississippi Power & Light Company, two affiliated companies of Louisiana Power, which pursuant to orders of this Commission have divested themselves of their gas properties,

purporting to show an increase in operating expenses per customer for Arkansas Power & Light Company and Mississippi Power & Light Company in 1954 as compared with 1949 exceeding the increase during this same period for Louisiana Power; (b) that the foregoing additional evidence establishes that the requirements of Section 11 (b) (1) of the Act would permit the retention by Louisiana Power of its non-electric properties; (c) that the legislative history of the Act demonstrates that State policy primarily determines whether gas and electric properties should be retained in a general operating company; (d) that the public interest will best be served by the retention of the gas properties by Louisiana Power; and (e) that from an "over all" point of view it would appear that the Act has accomplished its purpose with respect to this utility and that further "disintegration" would only prove harmful.

IV

73 Notice Is Further Given that Middle South and Louisiana Power and any other interested person may file a statement in support of or in opposition to the position of Public Service Commission setting forth in such statement the nature of his interest therein, the allegations in the petition of Public Service Commission which he contests and the reasons and conclusions in support of his position. This Statement of Position with supporting arguments should be submitted on or before June 13, 1955 at 5:30 P. M., E. D. S. T. and should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C.. Thereafter, on June 20, 1955 at 10:30 A. M., E. D. S. T. the Commission will hear oral argument thereon.

By the Commission.

[SEAL]

ORVAL L. DUBois,

Secretary.

74 Before the Securities and Exchange Commission

(Holding Company Act Release No. 11782)

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT
COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW
ORLEANS PUBLIC SERVICE, INC. RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935)

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

Findings and Opinion

March 20, 1953

Integration of Holding Company System

Retainability of Integrated Electric System

Where electric utility assets controlled by a registered holding company are shown to be interconnected and economically operated, and where in other respects such assets meet the definition of a public utility system contained in Section 2
75 (a) (29) (A) of the Act, and where Commission has previously made *prima facie* determination of integration, held that retention of such properties as the principal utility system is appropriate under Section 11 (b) (1).

Non-Retainability of Additional System

Where subsidiary of registered holding company conducts both electric and gas operations and electric operations are held to be part of integrated electric utility system, held that gas properties are not retainable as additional system, the Commission finding that evidence is not sufficient to justify finding that "loss of substantial economies" would be incurred if retention of gas system were not permitted.

Non-Retainability of Other Businesses

Minor steam and water operations of subsidiary of registered holding companies held not to be retainable as reasonably incidental or economically necessary or appropriate to operation of principal electric utility system.

Appearances:

Daniel James and Robert Krones, of Cahill, Gordon, Zachary & Reindel, New York, New York, for Middle South Utilities, Inc.

L. J. Darrah, of Jones, Walker & Waechter, New Orleans, Louisiana, for New Orleans Public Service, Inc.

J. Raburn Monroe, of Monroe & Lemann, New Orleans, Louisiana, for Louisiana Power & Light Company.

Marvin S. Fink, for the Division of Public Utilities of the Securities and Exchange Commission.

76 These proceedings concern the status of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiaries under the provisions of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("Act").

On March 7, 1949, the Commission issued its Order under Section 11 (e) of the Act approving a plan for the dissolution of Electric Power & Light Corporation ("Electric"), a registered holding company,¹ on the basis of the Commission's Findings and Opinion of March 1, 1949.² Subsequent to court approval,³ the plan was consummated in May and July 1949. That plan, which provided for the dissolution of Electric and retirement of its outstanding securities through the exchange of portfolio securities, also provided for the creation of a new holding company, Middle South, which acquired from Electric the latter's holdings of the common stocks of Arkansas Power

¹ Electric Power & Light Corporation, Holding Company Act Release No. 8906 (March 7, 1949).

² Electric Power & Light Corporation, Holding Company Act Release No. 8889 (March 1, 1949).

³ In Re Electric Power & Light Corporation (unreported) Civ. Action No. 49-347 (S. D. N. Y., April 22, 1949), aff'd 176 F. 2d 687 (C. A. 2, 1949) stay denied 337 U. S. 903 (1949).

& Light Company ("Arkansas") (100%), Louisiana Power & Light Company ("Louisiana") (100), Mississippi Power & Light Company ("Mississippi") (100%), and New Orleans Public Service, Inc. ("New Orleans") (95.2%). Each of these companies at that time owned and operated electric utility properties and gas utility properties, and in addition, certain of the companies owned and operated non-utility properties. Middle South also acquired from Electric all of the securities of Gentilly Development Company ("Gentilly"), a non-utility land company.

77 Since Middle South's organization, Arkansas has disposed of its transportation and gas properties,⁴ and Mississippi has disposed of its gas properties.⁵ At the present time, Arkansas and Mississippi are engaged almost entirely in electric operations. Louisiana conducts electric and gas properties,⁶ and New Orleans is engaged in electric, gas and transportation operations. In addition, certain of the subsidiaries have minor steam and water facilities. Gentilly has disposed of its land and now has only cash.

In our Findings and Opinion on the Electric plan, we stated that we could approve the creation of Middle South as a holding company although we were not prepared at that time to make the definitive findings required under Section 11 of the Act with respect to the integrated nature of the electric properties or the retainability of the non-electric properties. Accordingly, in our Order of March 7, 1949 approving the Electric plan, we reserved jurisdiction to institute and conduct such further proceedings under Section 11 (b) of the Act with respect to Middle South as may be necessary or appropriate.

78 On January 29, 1953, we issued an Order, convening hearings pursuant to Section 11 (b) (1), directed to Middle South, Arkansas, Louisiana, Mississippi and New Orleans as Respondents, setting forth the following issues:

⁴ Arkansas Power & Light Company, Holding Company Act Release No. 10077 (September 6, 1950) (Gas properties); Arkansas Power & Light Company, Holding Company Act Release No. 10310 (Transportation properties).

⁵ Mississippi Power & Light Company, Holding Company Act Release No. 11019 (January 22, 1952).

⁶ Louisiana disposed of its transportation properties on March 1, 1949.

"1. Whether the jurisdiction heretofore reserved in order of March 7, 1949 with respect to the Middle South holding company system under Section 11 (b) of the Act should be released.

"2. Whether the Commission's prima facie determination that the electric utility assets of the Middle South holding company system constitute an integrated electric utility system as defined in Section 2 (a) (29) (A) of the Act and constitute its principal public-utility system as set forth in Section 11 (b) (1) of the Act should be made definitive and final.

"3. Whether Middle South and Louisiana should be required to take action to dispose of the gas utility assets and non-utility assets of Louisiana and, if so, what terms and conditions should be imposed in connection therewith.

"4. What further action should be required at this time of the respondents under Section 11 (b) (1) of the Act."

In their answer filed pursuant to direction of the Commission in the order convening the hearing, Respondents claimed that the electric properties of the four public utility companies constituted an integrated electric utility system and were retainable as Middle South's principal system; Middle
79 South and Louisiana claimed that the gas properties of Louisiana could be retained as an additional system; and Middle South and New Orleans stated that the gas properties and transportation properties of New Orleans together with the electric properties of that Company are operated under a unitary franchise under which the City of New Orleans has the right to require that all three services be rendered by the holder of the franchise. At the public hearing, a representative of the City of New Orleans testified in support of the City's position as set forth in the answer of Middle South and New Orleans, and to the further effect that the City was opposed to segmentation of the gas, electric and transportation properties of New Orleans. No other representatives of public bodies or security holders' interests appeared at the hearing. Respondents waived briefs and argument. On the basis of the record, we make the following findings:

Applicable Statutory Standards

The statutory standards which are applicable to a determination of the status of the Middle South system are to be found in Section 11 (b) (1) and 2 (A) (29) of the Act. Section 11 (b) (1) provides:

"(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

"(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection

of investors or consumers and not detrimental to the proper functioning of such system or systems."

81 The term "integrated public utility system" is defined in Section 2 (A) (29) with respect to utility companies, as follows:

"(29) 'Integrated public-utility system' means—

"(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single inter-connected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

"(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: Provided, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region."

82 In considering the application of these standards to determine the status of Middle South and its subsidiaries, we shall discuss first the operations of Middle South, then the gas properties of Louisiana sought to be retained and thereafter the New Orleans situation.

Description of Middle South

A. General:

Attached hereto as Appendix A is a consolidating balance sheet of Middle South as of December 31, 1952. Attached

hereto as Appendix B is a consolidating income statement of Middle South for the twelve months ended December 31, 1952.

Middle South is purely a holding company whose principal assets consist of its holdings of the common stock of its subsidiaries, Arkansas, Louisiana, Mississippi and New Orleans.⁷ The subsidiaries of Middle South operate an interconnected electric system in the States of Arkansas, Louisiana and Mississippi. Two of the subsidiaries, Louisiana and New Orleans, also conduct gas operations, and New Orleans operates 83 a street transportation system in the City of New Orleans. In addition, certain of the subsidiaries also operate minor water and steam properties.

At December 31, 1952, the subsidiaries furnished electric service to 732,308 customers, and gas service to 202,512 customers in an area having an aggregate population of approximately 4,000,000. The more important cities served with electricity by the system are Little Rock, Pine Bluff, El Dorado, Camden and Hot Springs, Arkansas; New Orleans, Gretna and Metairie, Louisiana; and Jackson, Greenville, Natchez, Greenwood and Clarksdale, Mississippi. The principal cities served with gas are New Orleans, Gretna and Metairie, Louisiana.

At December 31, 1952, the total consolidated plant account was stated at \$465,970,699, of which \$419,905,711 was electric plant, including \$12,255,874 classified as electric plant acquisition adjustments; \$29,639,542 was gas plant, including \$351,-134 classified as gas plant acquisition adjustments; \$15,968,812 was transportation plant, and \$456,637 represented miscellaneous properties. Applicable reserves for depreciation or retirement and amortization of plant acquisition adjustments aggregated \$76,938,882. Set forth below as Table I is a summary

⁷ Middle South is one of five "sponsoring companies" of Electric Energy, Inc., and holds 10% of the \$3,500,000 outstanding common stock of that company. In authorizing acquisition of the stock of Electric Energy, Inc. by the sponsoring companies, we reserved the right in the future to determine whether any one or more of the sponsoring companies may retain the ownership of the stock of Electric Energy, Inc. That reservation is unaffected by these proceedings.

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of the plant account and reserves of each of the operating companies as of December 31, 1952.

84

TABLE I

	Arkansas Power & Light Co.	Louisiana Power & Light Co.	Mississippi Power & Light Co.	New Orleans Public Serv- ice Inc.
Plant, Property and Equipment:				
Electric Utility Plant	\$151,275,361	\$82,053,990	\$73,933,582	\$74,289,885
Natural Gas Utility Plant		7,645,715		21,174,004
Transportation Plant				15,968,812
Construction Work in Progress	15,169,189	5,479,694	5,956,210	
Other		190,499	226,750	
Plant Acquisition Adjustments:				
Electric	4,990,986	3,782,140	3,482,748	
Natural Gas		351,134		
Total Plant, Property and Equipment.....	171,435,436	99,503,172	83,599,290	111,432,701
Less Reserves for:				
Property Depreciation or Retirement	17,348,276	16,944,016	9,849,404	26,393,203
Amortization of Utility Plant Acquisition Adjustments	1,618,710	2,688,868	2,096,405	
Total.....	18,966,986	19,632,884	11,945,809	26,393,203
Plant, Property and Equipment, less reserves.....	152,468,550	79,870,288	71,653,481	85,039,498

85 For the twelve months ended December 31, 1952, the total consolidated operating revenues of the system amounted to \$116,055,327, of which \$94,927,405 were electric revenues, \$12,086,069 were gas revenues, \$8,954,765 were transportation revenues and \$87,088 were from miscellaneous sources. The system operating income was \$22,979,947, and gross income and net income after payment of the subsidiaries' preferred dividends, amounted to \$23,370,541, and \$13,511,243 respectively. Table II below sets forth a summary income account for each subsidiary company for the twelve months ended December 31, 1952.

TABLE II

	Arkansas	Louisiana	Mississippi	New Orleans
Operating Revenues:				
Electric.....	\$36,393,281	\$20,112,351	\$22,430,853	\$22,12
Natural Gas.....		3,977,364		8,
Transportation.....				8,
Other.....		25,366	61,722	
Total Operating Revenues.....	36,393,281	24,115,081	22,492,575	39,185,905
Operating Revenue Deductions.....	27,048,340	19,888,868	17,704,842	34,191,761
Net Operating Revenues.....	9,344,941	4,226,213	4,787,733	4,994,144
Rent for lease of plant.....	373,084			
Operating Income.....	8,971,857	4,226,213	4,787,733	4,994,144
Other Income (Net).....	154,222	4,593	78,654	146,732
Gross Income.....	9,126,079	4,230,806	4,866,387	5,140,876
Interest and other Charges to Gross Income.....	2,855,128	1,091,632	1,274,621	1,631,829
Net Income.....	6,270,951	3,139,174	3,591,766	3,509,047
Preferred Dividends.....	608,609	356,532	266,856	369,541
Balance.....	5,662,342	2,782,642	3,324,910	3,139,506

87. *B. Electric Utility System:*

Having described the plant, revenues, and territory served by the operating subsidiaries of Middle South, we turn now to a discussion of the system from the viewpoint of its electric operations to determine whether it constitutes an integrated electric utility system as defined in Section 2 (a) (29) (A).

Sales of electric energy of the system, after elimination of intercompany transactions, aggregated 6,640,253 MKWH, resulting in consolidated electric operating revenues of \$94,927,000. Table III sets forth the sales of energy of each company for the year 1952, and the revenues received therefrom.

TABLE III

	Arkansas	Louisiana	Mississippi	New Orleans
<i>Electric Energy Sales (MKWII)</i>				
Residential and Rural.....	330,573	197,704	173,648	245,176
Commercial.....	272,581	114,118	176,520	306,176
Industrial.....	1,832,701	570,176	431,598	297,331
Government and Municipal.....	58,385	58,913	42,690	87,528
Total General Business.....	2,494,240	940,911	824,456	936,673
Public Utilities:				
System Companies.....	441,514	693,362	189,615	356,781
Non-System Companies.....	470,694	127,990	845,289	
Total Electric Energy Sales.....	3,406,448	1,762,263	1,859,360	1,293,454
<i>Electric Operating Revenues (000's Omitted)</i>				
Residential and Rural.....	11,893	6,648	6,068	7,511
Commercial.....	7,310	4,047	5,540	8,098
Industrial.....	11,455	5,613	5,265	3,564
Government and Municipal.....	718	728	642	1,127
Total General Business.....	31,376	17,036	17,515	20,300
Public Utilities:				
System Companies.....	2,253	1,968	342	1,567
Non-System Companies.....	2,590	909	4,471	
Total from Energy Sales.....	36,228	19,913	22,328	21,867
Miscellaneous Revenues.....	165	199	103	255
Total Electric Operating Revenues.....	36,393	20,112	22,431	21,867

89 The total net generating capacity of the system at the end of 1952 was 1,275,905 KW. Of this amount 839,250 KW represents capacity installed in the years 1943-1952, inclusive. In addition, there is under construction and on order additional generation equipment having an estimated net capability of 907,000 KW to be installed in the years 1953-1955. The record indicates that the construction programs of the Middle South system are coordinated through an operating committee. This committee meets regularly and reviews and estimates the system loads for a period several years in advance. Estimates are also made of the required system generating capabilities and of the individual companies. On the basis of these estimates, the operating committee makes its recommendations to the individual companies' managements as to the installation of additional generating facilities and construction of transmission lines. The record indicates that this system planning has made possible the installation of larger generating units than would be feasible if each of the companies were operated as individual entities, and has also

resulted in lower unit costs for the power produced as well as lower initial installation costs.

The properties of the four operating subsidiaries are interconnected through a transmission grid covering the entire system and consisting for the most part of lines operated at 110 KV and higher. At December 31, 1952 the system had 4,828 miles of lines operated at 33 KV or over, of which 3,910 miles were 110 KV or over.

90 The operating committee also establishes general procedures for system operation under which the system

operator at Pine Bluff, Arkansas, determines the methods of operation, and provides for scheduling of generation, over all system dispatching, and all other interrelated operations involved in the coordination of generation and transmission. The system operator at Pine Bluff coordinates the operations of the various companies of the system, provides for the scheduling of generation, the dispatching of energy over transmission lines, and the making and keeping of records and necessary reports. He also supervises load control, interchange and metering of energy, and the relaying facilities necessary for system operation.

In addition to the main system dispatcher at Pine Bluff, dispatching offices are also maintained at the Market Street Generating Station in New Orleans, and at the Rex Brown Generating Station at Jackson, Mississippi. The New Orleans dispatching office controls the generation and switching in the City of New Orleans and also supervises the switching of the Louisiana transmission system in Southern Louisiana. In supervising the switching of the Louisiana transmission system, certain functions are cleared with the Pine Bluff office prior to execution, while certain other functions are handled directly by the New Orleans dispatcher.

The record shows that there are substantial transfers of power among Arkansas, Louisiana and Mississippi. New Orleans supplies all of its own power and a substantial part of the requirements of Louisiana for the latter's operations in Southern Louisiana. Table IV below shows the sales of power among the system companies for the calendar year 1952.

TABLE IV

Sales by—	Arkansas		Sales to—			
			Louisiana		Mississippi	
	MKWH	Revenues	MKWH	Revenues	MKWH	Revenues
Arkansas		\$	3,107	\$67,000	438,407	\$2,186,000
Louisiana	401,760	1,024,000			291,602	944,000
Mississippi	188,926	319,000	689	23,000		
New Orleans			356,781	1,567,000		

92 In addition to facilitating transfers of power between system companies, the unified operation, in certain instances, has also made possible larger sales of power to other utility interest than might otherwise be feasible. Thus, in 1952, the system sold to TVA 689,572 MKWH for \$3,449,267. While substantially all of this power was delivered for the account of Mississippi, it was made possible only by deliveries of power from Arkansas and Louisiana.

Arkansas, Louisiana, and Mississippi are subject to the jurisdiction of the Federal Power Commission.* In addition, Arkansas is subject to regulation by the Arkansas Public Service Commission, Louisiana is subject to regulation by the Louisiana Public Service Commission, and New Orleans is subject to regulation by the Commission Council of the City of New Orleans.

In our Findings on the Electric plan and based upon the record theretofore developed in proceedings concerning that company and its subsidiaries, we made the following finding (Holding Company Act Release No. 8889 at p. 11):

"The record indicates that the electric properties of the four operating companies are interconnected and that since 1930 they have been constructed and operated on a systemwide basis. This system has a common dispatcher and an operating committee which forecasts the loads, prepares over-all

93 schedules and gives general directions to the dispatcher.¹⁰ The construction requirements of the companies are formulated on a system rather than on an individual

* New Orleans states that it is not subject to the jurisdiction of the Federal Power Commission.

¹⁰ See footnote on p. 115.

basis. Thus, the determination of sites and ownership of generating facilities has been on the basis of the most economical and efficient installation from the viewpoint of the system's load requirements rather than the requirements of the individual companies.

Based upon the record developed in the Electric proceedings and supplemented by the instant proceedings, we conclude that the electric system of Middle South constitutes an integrated public utility system. In reaching this conclusion, we have considered the long historical record of unified operations of the electric facilities, the extent of regulation by State Commissions, and the fact that the system is not so large as to impair the effectiveness of regulation in any of the states in which the company operates. We have also considered the high degree of coordination which, in part, appears to be due to common control, leading in turn to common planning development.

We turn now to a discussion of the Louisiana gas system.

Louisiana Gas Properties

As previously noted, Louisiana owns and operates
94 electric and gas properties in the State of Louisiana. Its
gas operations are conducted in an area contiguous to
the City of New Orleans, and also in the northeastern por-
tion of the State of Louisiana. As of December 31, 1952,
Louisiana supplied gas service to approximately 55,000 cus-
tomers in 48 communities. For the twelve months ended De-
cember 31, 1952, its total gas operating revenues were
\$3,977,364 and its total gas operating revenue deductions were
\$3,419,388.⁹ For the same period the total operating revenues
of the Middle South system were **\$116,055,327** and total system
operating revenue deductions were **\$92,702,296.**

It has been judicially determined that both electric and gas properties cannot be retained together as a single integrated public utility system,¹⁰ and that if a holding company desires

⁹These deductions represent the cost of gas purchased, and that portion of Louisiana's expenses allocated by it to the gas operations.

¹⁰*The Philadelphia Company, et al. v. S. E. C.*, 177 F. 2d 720, 723 (C. A. D. C. 1949).

to retain an integrated gas utility system in addition to an integrated electric utility system, such retention must be justified under the additional standards set forth in Section 11 (b) (1) (A) (B) and (C).¹¹ For the purposes of this proceeding, we need not determine whether the gas properties of Louisiana constitute one or more additional systems, and, in fact, no evidence was adduced on that point. We may assume, however, for the purposes of discussion, that the northern and southern gas properties of Louisiana constitute an integrated public utility system as defined in Section 2 (a) (29) (B). We must consider then whether the standards of Clause (A) of Section 11 (b) (1) are met. In order to meet the burden imposed by that clause, the respondent must show that "each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system".

The general framework of the Act as well as its legislative history demonstrates the intention of permitting the retention of additional systems only where such additional system is so small that it could not operate economically under separate management.¹² It is clear that the gas properties of Louisiana are capable of effective and economical operation as a separate entity, and are, in fact, larger than many completely independent systems. We note in this connection that two of Louisiana's sister companies, Arkansas and Mississippi, have disposed of their gas properties which are now independently operated.

We have previously pointed out that the separation of electric and gas utility systems from common control frequently results in some increase in operating expenses due to the elimi-

¹¹ The Philadelphia Company, et al., Holding Company Act Release No. 8242 (June 1, 1948).

¹² Cong. Rep. on S. 2796, H. R. Rep. No. 1903, 74th Cong., 1st Sess. p. 71; 79 Cong. Rec. 14479 (Aug. 24, 1935); *The North American Company v. S. E. C.*, 327 U. S. 686, 696-697 (1946).

96 nation of certain types of savings which common control has permitted.¹³ However, the statutory criterion for retention stated in Section 11 (b) (1) (A) of the Act is not whether there is some additional expense. For the loss of economies to be "substantial" they must be "important" in the sense that they are of such magnitude as to cause a serious economic impairment of the system.¹⁴ There is no evidence in this case to warrant the conclusion that separation of the gas and electric properties of Louisiana would cause the serious economic impairment of the gas system or that the gas properties could not operate effectively and efficiently under separate ownership.

Louisiana sought to show that the separation of the gas and electric properties would result in additional expense to both the gas and electric operations, relying upon the testimony of its president, based upon his experience in operating the company as a combined electric and gas company. No study of any kind was introduced to show what the expense of the gas properties would be if they were to be operated as a separate unit. The company introduced into the record an exhibit summarizing the results of a personnel study designed to ascertain how many employees of Louisiana could be released to go with the gas properties if such properties were disposed of. On December 31, 1952 Louisiana had 1,501 employees of which 816 devoted their full time to electric operations, 161 devoted their full time to gas operations and 524 performed combined operations. Louisiana's witness estimated that if

97 the gas properties were disposed of, 213 employees would be released. These would include all employees devoting full time to the gas operations plus 52 of the 524 employees engaged in both gas and electric operations. The same witness testified that in his opinion separation of facilities would result in increasing the cost of electric operations by from \$400,000 to \$450,000 as compared with total

¹³ Engineers Public Service Company, 12 S. E. C. 41 (1942); The Philadelphia Company, *supra*; The North American Company, 11 S. E. C. 194 (1946).

¹⁴ General Public Utilities Corporation, Holding Company Act Release No. 10982, p. 24 and footnote 23 therein (December 28, 1951).

operating expenses allocated to gas operations of approximately \$962,000 (excluding cost of purchased gas).

As indicated, the estimate of "loss of economies" does not relate directly to the additional expense that might be incurred by a separated gas system, but rather was restricted to the additional expense that might be incurred by the electric properties of Louisiana. We have previously held that the losses in economies which may be considered under Clause A of Section 11 (b) (1) are limited to those directly related to the additional system sought to be retained and not to the principal system, and that the company has the burden under the Act of demonstrating by clear and convincing evidence that such substantial economies would be lost were the gas properties not permitted to be retained.¹⁵ Further, even if the "loss of economies" to the principal system were a relevant factor, the estimate should have been based upon all the electric operations of the principal system, that is, the entire Middle South electric system, and not merely to the operation of a single company.¹⁶

We cannot find that the mere statement by the witness for the company that there would be a substantial increase in the expenses of the gas operations if they were separated sustains the burden set forth in the statute. Moreover, even if the question of increased expenses to the independent electric operations of one company were pertinent to the issue at hand, and we have found that it is not, we could not find that the company had sustained its burden. The personnel study previously referred to appears to have been of a cursory nature without support of any underlying data which could be used to test the opinion of the witness. Furthermore, even were we to accept the opinion of the company that the operating ex-

¹⁵ The Philadelphia Company, et al., Holding Company Act Release No. 8242, (June 1, 1948); The North American Company, 11 S. E. C. 194 (1942); Engineers Public Service Company, 12 S. E. C. 41 (1942); Cities Service Power & Light Company; 14 S. E. C. 28 (1943); The Middle West Corporation, 15 S. E. C. 309 (1944); Cities Service Company, 15 S. E. C. 962 (1944); The North American Company, 11 S. E. C. 194, 208 (1942), affirmed sub nom *The North American Company v. S. E. C.* 144 F. 2d 148 (C. A. 2, 1943), 327 U. S. 686 (1946).

¹⁶ General Public Utilities Corporation, Holding Company Act Release No. 10982 (December 28, 1951).

penses of the electric department of Louisiana would be increased in an amount of between \$400,000 and \$450,000, we could not find that that would constitute the loss of "substantial economies". Such increased expenses would amount to only 0.34% to 0.39% of the consolidated revenues of Middle South and 0.73% to 0.82% of the consolidated operating expenses. These percentages are lower than those which we have rejected in previous cases.¹⁷

99 Louisiana also contends that the gas properties which are located in the area adjacent to the City of New Orleans are so inter-related with the gas properties of New Orleans as to constitute an integrated system. Primarily this contention was based upon the fact that the area adjacent to New Orleans served by Louisiana has a common economic interest with the City of New Orleans. The witness for Louisiana admitted, however, that there was no interchange of gas between New Orleans and Louisiana; that only a very small amount of gas was supplied to Louisiana from the lines of New Orleans and in that case New Orleans was acting merely as a conduit for the supplier of the gas; that there were separate property bases; that the two properties were subject to different regulation, Louisiana being subject to the Louisiana Public Service Commission, and New Orleans being subject to the City of New Orleans; that there was no common operation or common planning with respect to the separate properties, and that in the final analysis the alleged integration existed only by reason of the facts that the common stocks of both companies were owned by Middle South; that both companies purchased their gas primarily from United Gas Pipe Line Company; and there was a geographic homogeneity in the area served.

It is our conclusion that respondent has failed to establish that separation of the Louisiana gas properties would result in the loss of substantial economies (contemplated by Clause (A) of Section 11 (b) (1)), such as to justify the retention of an additional system, and we further conclude that the gas

¹⁷ See: The Philadelphia Company, et al., *supra*; General Public Utilities Company, *supra*.

100 properties cannot be retained together with the electric properties of Louisiana. Our order to be entered herein will, therefore, direct Louisiana and Middle South to divest themselves of their interests in the Louisiana gas properties.

New Orleans

As previously indicated, New Orleans conducts electric, gas and transportation operations in the City of New Orleans. For the twelve months ended December 31, 1952, its operating revenues aggregated \$39,185,905, divided as follows: electricity—\$22,122,180; gas—\$8,108,960; transportation—\$8,954,-765. In the same period, the consolidated operating revenues of the Middle South system were \$116,055,327. Electric operations of New Orleans for this period accounted for approximately 19% of the consolidated operating revenues while the gas operating revenues were approximately 7%, and the transportation operating revenues were approximately 7.7% of the consolidated revenues.

New Orleans' operations of the electric, gas, and transportation services are conducted pursuant to indeterminate permits granted by ordinances of the Commission Council of the City of New Orleans, supplementary to an ordinance adopted in 1922 commonly known as the "Settlement Ordinance". That Ordinance provides, among other things, for the establishment and continuing determination of the Company's rate base, the rate of return on the rate base, and the rates and fares to produce such return. It also provides that the City have a perpetual option to purchase parts or all of the property, at the rate base values. The Settlement Ordinance, as supplemented, limits dividends that may be paid on the 101 common stock of New Orleans to an amount not to exceed \$2.25 per share per annum, and provides for an allowable rate of return on the rate base of 7½% per annum. The record indicates that at no time has the Company earned a return as high as 7½% and that as a matter of practice the amount which they may earn is limited to the \$2.25 per share which the Company is allowed to pay out as dividends plus a small additional amount.

The Commission Council of the City of New Orleans exercises complete regulatory jurisdiction over the Company with respect to rates, accounting, property acquisitions, and issuance of securities.

The record contains an affidavit of the Commissioner of Public Utilities of the City of New Orleans which sets forth a statement of policy of the City concurred in by the Mayor of New Orleans and all the members of the Commission Council of the City. That statement of policy sets forth that the unified operation of electric, gas and transportation operations by New Orleans is the result of careful planning on the part of the City and is designed "to foster and safeguard the benefits which this City acquired for itself in connection with the 1922 reorganization."¹⁸ That statement of policy also sets forth that the City "has certain well defined legal rights to have the operations continue as they have" and that "For both legal and practical reasons therefor, the City will firmly enforce its rights and protect the benefits which it enjoys under the present local franchise situation."

102 The Commissioner of Public Utilities of the City of New Orleans testified that not only the regulatory officials but also the public of the City recognized that the transportation operations of New Orleans were subsidized by the other properties. He stated that he had seen to it that there was publicity to acquaint the citizens of New Orleans with the fact of subsidization so that they would know that the 7c transportation fare in the City of New Orleans was possible only in this way and that the electric and gas consumers were paying for it.

In view of the expressed policy of the City with respect to its strong desire for continued unified operations and in view of the New Orleans franchise situation, we do not propose at this time to take any action with respect to the gas and transportation properties of New Orleans under the standards of Section 11 (b) (1) of the Act. We have already found that the electric operations constitute part of the integrated system of Middle South.

¹⁸ The present New Orleans Company emerged from a reorganization of separate companies conducting utility operations in the City of New Orleans.

Other Properties

Arkansas owns certain steam properties, and Louisiana and Mississippi own certain water properties. These properties have an aggregate carrying value of less than \$500,000. It is clear that these other properties cannot constitute additional businesses under the standards of the Act and no effort has been made to justify their retention. In fact, the record indicates that efforts are being made to dispose of them.

103 Action To Be Taken:

We have heretofore concluded that the electric system of Middle South constitutes a unified and integrated utility system and that it constitutes the principal system of Middle South. We have also indicated that the gas properties of Louisiana, the steam business of Arkansas and the water properties of Louisiana and Mississippi cannot be retained under the standards of Section 11 (b) (1).

An appropriate order will issue in accordance with this Opinion and releasing jurisdiction heretofore reserved in the Electric proceedings.

By the Commission (Commissioners McEntire, Rowen, and Adams), Chairman Cook not participating.

[SEAL]

ORVAL L. DUBois,
Secretary.

APPENDIX A
MIDDLE SOUTH UTILITIES, INC., AND SUBSIDIARIES
[Consolidating Balance Sheet, December 31, 1952]

Assets	Consolidated	Middle South Utilities, Inc.	Arkansas Power & Light Co.	Louisiana Power & Light Co.	Mississippi Power & Light Co.	New Orleans Public Service, Inc.	Gentilly Development Co., Inc.
Plant, Property and Equipment:							
Electrical Utility Plant.....	\$381,552,818		\$151,275,361	\$82,053,990	\$73,933,582	\$74,289,885	
Natural Gas Utility Plant.....	28,819,719			7,645,715		21,174,004	
Transportation Plant.....	15,968,812					15,968,812	
Construction Work in Progress.....	26,605,093		15,169,189	5,479,694	5,956,210		
Other.....	417,249			190,499	226,750		
Plant Acquisition Adjustments:							
Electric.....	12,255,874		4,990,986	3,782,140	3,482,748		
Natural Gas.....	351,134			351,134			
Total Plant, Property and Equipment.....	465,970,699		171,435,536	99,503,172	83,599,290	111,432,701	
Less Reserves for:							
Property Depreciation or Retirement.....	70,534,899		17,348,276	16,944,016	9,849,404	26,393,203	
Amortization of Utility Plant Acquisition Adjustments.....	6,403,983		1,618,710	2,688,868	2,096,405		
Total.....	76,938,882		18,966,986	19,632,884	11,945,809	26,393,203	
Plant, Property and Equipment, less reserves.....	389,031,817		162,468,550	79,870,288	71,653,481	85,039,498	
Investment and Fund Accounts:							
Subsidiaries Consolidated:							
Arkansas Power & Light Company.....		\$46,746,567					
Louisiana Power & Light Company.....		20,225,084					
Mississippi Power & Light Company.....		22,882,078					
New Orleans Public Service, Inc.....		31,573,989					
Gentilly Development Company, Inc.....		366,206					
Other.....	828,187	363,455	137,167	27,029	83,756	49,003	\$167,777
Total Investment and Fund Accounts.....	828,187	122,157,379	137,167	27,029	83,756	49,003	167,777
Current Assets:							
Cash.....	20,141,368	3,549,499	6,038,229	2,596,862	3,088,349	4,832,683	35,746
Special Deposits.....	2,983,732	2,161,730	165,622	9,597	128,320	518,463	
Working Funds.....	406,715	800	114,678	107,415	129,874	53,948	
Temporary Cash Investments—U. S. Government Obligations.....	20,791,493	3,200,135	7,977,836	75,440	2,993,135	6,544,947	
Other.....	15,305,351	609,605	5,559,929	2,731,461	2,436,397	4,882,790	6,491
Total Current Assets.....	59,628,659	9,521,769	19,856,294	5,520,775	8,776,075	16,832,831	42,237
Deferred Debits.....	1,063,553		930,285	3,595	129,670		
Total.....	450,552,216	131,679,148	173,392,299	85,421,687	80,642,982	101,921,332	210,014

APPENDIX A—page 2

MIDDLE SOUTH UTILITIES, INC., AND SUBSIDIARIES
 [Consolidating Balance Sheet December 31, 1952]

Liabilities	Consolidated	Middle South Utilities, Inc.	Arkansas Power & Light Co.	Louisiana Power & Light Co.	Mississippi Power & Light Co.	New Orleans Public Service, Inc.	Gentilly Development Co., Inc.
Capital Stock and Surplus:							
Middle South Utilities, Inc.:							
Common Stock (no par value)—Authorized, 7,500,000 shares; Issued and Outstanding, 6,650,000 shares.....	\$116,552,050	\$116,552,050					
Subsidiaries:							
Preferred Stocks (stated at liquidation value of \$100 a share).....	27,519,600		\$9,350,000	\$5,942,200	\$4,447,600	\$7,779,800	
Common Stock of New Orleans Public Service Inc.—53,703,957 shares.....	1,342,599		48,250,000	17,000,000	21,000,000	27,817,395	\$73,909
Total Capital Stock.....	145,414,249	116,552,050	57,600,000	22,942,200	25,447,600	35,597,195	73,909
Premium on Preferred Capital Stock.....	276,953						
Minority Interest in Surplus of New Orleans Public Service Inc.....	350,663						
Surplus:							
Capital.....	9,108,469	9,108,469					307,476
Earned, Less Amount Applicable to Minority Interests.....	17,580,557	3,053,093	3,860,440	7,164,930	5,450,621	7,265,373	(175,494)
Total Surplus.....	26,689,026	12,161,562	3,860,440	7,164,930	5,450,621	7,265,373	131,982
Total Capital Stock and Surplus.....	172,730,891	128,713,612	61,460,440	30,107,140	40,898,221	43,139,521	205,891
Long-Term Debt—Subsidiaries:							
First Mortgage Bonds.....	200,007,410		86,200,000	35,333,110	35,500,000	42,974,300	
3 3/8% Sinking Fund Debentures due 1974.....	8,300,000		8,300,000				
Other.....	12,956,748		2,500,000	8,375,250	2,081,498		
Total Long-Term Debt.....	221,264,158		97,000,000	43,708,360	37,581,498	42,974,300	
Total Capitalization.....	393,995,049	128,713,612	158,460,440	73,815,490	68,479,719	86,113,821	205,891
Current Liabilities.....	46,534,415	2,965,536	12,971,314	9,058,332	10,827,533	11,628,899	4,123
Deferred Credits.....	3,272,391		1,213,845	735,392	420,494	902,660	
Reserves not shown elsewhere.....	4,941,403		231,224	808,032	626,195	3,275,952	
Contributions in Aid of Construction.....	1,808,958		515,476	1,004,441	289,041	3,275,952	
Total.....	450,552,216	131,679,148	173,392,299	85,421,687	80,642,982	101,921,332	210,014

() Indicates red figure.

APPENDIX B

MIDDLE SOUTH UTILITIES, INC., AND SUBSIDIARIES

[Consolidating Statement of Income, 12 Months Ended December 31, 1952]

419398-57

Subsidiaries	Consolidated totals	Middle South Utilities, Inc.	Arkansas Power & Light Co.	Louisiana Power & Light Co.	Mississippi Power & Light Co.	New Orleans Public Service, Inc.	Gentilly Development Co., Inc.
Operating Revenues:							
Electric	\$94,927,405		\$36,393,281	\$20,112,351	\$22,430,853	\$22,122,180	
Natural gas	12,086,069			3,977,364		8,108,960	
Transportation	8,954,765					8,954,765	
Other	87,088			25,366	61,722		
Total Operating Revenues	116,055,327		36,393,281	24,115,081	22,492,575	39,185,905	
Operating Revenue Deductions:							
Operating Expenses	54,751,625		16,220,859	11,658,320	11,003,264	22,000,697	
Amortization of utility plant acquisition adjustments	278,116			278,116			
Property depreciation or retirement reserve appropriations	11,158,610		3,337,050	2,251,500	1,870,060	3,700,000	
Taxes—other than income	10,437,342		2,235,570	1,725,064	1,535,644	4,941,064	
Provision for income taxes:							
Federal (no excess profits tax) Provision before effect of amortization of emergency facilities	15,933,221		5,270,969	3,826,484	3,419,768	3,416,000	
Reduction due to amortization of emergency facilities	(1,113,263)		(574,349)		(538,914)		
State	1,256,645		558,241	149,384	415,020	134,000	
Total Operating Revenue Deductions	92,702,296		27,048,340	19,888,868	17,704,842	34,191,761	
Net Operating Revenues	23,353,031		9,344,941	4,226,213	4,787,733	4,994,144	
Rent for Lease of Plants	373,084		373,084				
Operating Income	22,979,947		8,971,857	4,226,213	4,787,733	4,994,144	
Other Income (net)	390,594		154,222	4,593	78,654	146,732	\$6,393
Gross Income	23,370,541		9,126,079	4,230,806	4,866,387	5,140,876	6,393
Interest to Public and Other Deductions:							
Interest on long-term debt	6,396,729		2,718,834	1,189,364	1,128,031	1,360,500	
Other deductions	456,481		136,294	(97,732)	146,590	271,329	
Interest to Public and Other Deductions—Net	6,853,210		2,855,128	1,091,632	1,274,621	1,631,829	
Net Income	16,517,331		6,270,951	3,139,174	3,591,766	3,509,047	6,393

(Concluded on page following)

APPENDIX B (page 2)

MIDDLE SOUTH UTILITIES, INC., AND SUBSIDIARIES

[Consolidating Statement of Income, 12 Months Ended December 31, 1952—Concluded]

	Consolidated Totals	Middle South Utilities, Inc.	Arkansas Power & Light Co.	Louisiana Power & Light Co.	Mississippi Power & Light Co.	New Orleans Public Serv- ice, Inc.	Gentilly De- velopment Co., Inc.
Net Income (carried forward)	\$16,517,331		\$6,270,951	\$3,139,174	\$3,591,766	\$3,509,047	\$6,393
Preferred Dividends to Public (full requirements)	1,601,538		608,609	356,532	266,856	369,541	
Balance	14,915,793		5,662,342	2,782,642	3,324,910	3,139,506	6,393
Portion Applicable to Minority Interests in Common Stock	151,528					151,528	
Equity of Middle South Utilities, Inc. in Net Income of Subsidiaries	14,764,265		5,662,342	2,782,642	3,324,910	2,987,978	6,393
<i>Middle South Utilities, Inc.</i>							
Equity of Middle South Utilities, Inc. in Net Income of Subsidiaries	14,764,265		5,662,342	2,782,642	3,324,910	2,987,978	6,393
Gross Income:							
From Subsidiaries		\$9,864,330					
Other Income	50,869	50,869					
Total Expenses	14,815,134	9,915,199	5,662,342	2,782,642	3,324,910	2,987,978	6,393
	558,905	558,905					
Balance	14,256,229	9,356,294	5,662,342	2,782,642	3,324,910	2,987,978	6,393
Other Interest Deductions	21,986	21,986					
Balance Before Provision for Federal Tax on Income	14,234,243	9,334,308	5,662,342	2,782,642	3,324,910	2,987,978	6,393
Provision for Federal Tax on Income	723,000	723,000					
Consolidated Net Income	13,511,243	8,611,308	5,662,342	2,782,642	3,324,910	2,987,978	6,393

() Indicates red figure.

108 Before the Securities and Exchange Commission

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW ORLEANS PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

(Public Utility Holding Company Act of 1935).

IN THE MATTER OF ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

(Public Utility Holding Company Act of 1935)

Order under Section 11 (b) (1) requiring divestment by registered holding company of certain non-retainable properties, and order releasing jurisdiction

March 20, 1953

The Commission having, on March 7, 1949, issued its Order in proceedings concerning Electric Power & Light Corporation ("Electric"), then a registered holding company, under Section 11 (e) of the Public Utility Holding Company Act of 1935 ("Act"), approving a plan providing, among other things, for the creation of a new holding company, Middle South Utilities, Inc. ("Middle South"), and reserving jurisdiction with respect to the Section 11 problems of Middle South; and

The Commission having, on January 29, 1953, instituted proceedings directed to Middle South and its subsidiaries, Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service, Inc. ("New Orleans") to determine the action necessary to be taken by such respondents under Section 11 (b) (1) of the Act, and on the basis of the Commission's Findings and Opinion issued this date:

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It is ordered, Pursuant to Section 11 (b) (1) of the Act, that Middle South and its subsidiaries dispose or cause the disposition of their direct and indirect ownership in the non-electric properties owned by Arkansas, Louisiana and Mississippi in any appropriate manner not in contravention of the applicable provisions of the Act or the Rules and Regulations promulgated thereunder; and

It is further ordered, That jurisdiction heretofore reserved in our Order of March 7, 1949 (File No. 54-139) with respect to the Section 11 problems of Middle South be, and the same hereby is, released; and

It is further ordered, That jurisdiction be, and the
110 same hereby is, reserved to take such further steps as are necessary and appropriate to carry out the terms of this order.

By the Commission.

ORVAL L. DUBois,
Secretary.

Before the Securities and Exchange Commission
(Holding Company Act Release No. 12978)

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW ORLEANS PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

LOUISIANA POWER & LIGHT COMPANY, LOUISIANA GAS SERVICE CORPORATION

(File No. 70-3315)

LOUISIANA POWER & LIGHT COMPANY

111

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

Findings and opinion.

September 13, 1955

Reopening of Proceedings

Modification of Prior Order

Where offer of proof in support of petition to reopen proceedings and modify order entered requiring the divestment of certain properties pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act does not show that the conditions on which the order was based do not exist, petition denied.

Appearances:

Robert A. Ainsworth, Jr., of Ainsworth & Ainsworth, for Louisiana Public Service Commission.

J. Raburn Monroe, for Louisiana Power and Light Company.

Daniel James, of Cahill, Gordon, Reindel and Ohl, for Middle South Utilities, Inc.

Jerome M. Alper, and Willis C. McDonald and Harold A. Buchler, of McDonald and Buchler, and Fred G. Benton, Sr., of Benton & Mosley, for Jefferson Parish, Louisiana.

Solomon Freedman, and Robert Hislop, for Division of Corporate Regulation.

Louisiana Power & Light Company ("Louisiana Power") a public-utility subsidiary of Middle South Utilities, Inc., a holding company registered under the Public Utility Holding Company Act of 1935 (the "Act"), and Louisiana Gas Service Corporation ("Louisiana Gas"), a recently organized subsidiary of Louisiana Power, have filed a joint application-declaration pursuant to the Act relating to the proposed transfer by Louisiana Power of its non-electric properties to Louisiana Gas at their net book cost upon payment by Louisiana Gas of cash and 379,000 shares of \$10 par value stock of Louisiana Gas.

By order dated March 20, 1953, this Commission directed Louisiana Power, which is engaged in the electric, gas and water businesses, to dispose of its non-electric properties pursuant to Section 11 (b) (1) of the Act.¹ The application-declaration states that Louisiana Power, which has also applied for an order under Section 3 (a) (4) of the Act exempting it from registration as a holding company, expects to dispose of the stock of Louisiana Gas to be acquired, but that the manner of disposition has not been determined. Louisiana Gas proposes to raise cash for the acquisition and subsequent development of the properties by a private sale of first mortgage bonds.

We issued a notice of filing of the above summarized application-declaration which stated that interested person might request a hearing thereon.² The Louisiana Public Service

¹ Middle South Utilities Inc. et al., Holding Company Act Release No. 11782.

² Louisiana Power & Light Company, Holding Company Act Release No. 12740 (December 13, 1954).

113 Commission ("The Louisiana Commission"), a regulatory administrative tribunal having jurisdiction under Louisiana law of public utility companies operating in Louisiana, filed a petition for a hearing with respect to such application-declaration. In addition, the Louisiana Commission requested the reopening of the Section 11 (b) (1) proceedings in which we entered our order of March 20, 1953 directing that Louisiana Power dispose of its non-electric properties.

In response to our suggestion, the Louisiana Commission filed an offer of proof and a brief in support thereof. Louisiana Power filed a brief expressing the desire to be permitted to retain its gas properties. Jefferson Parish, Louisiana, filed a brief opposing the reopening of the record in the Section 11 (b) (1) proceedings and the proposal to transfer the non-electric properties of Louisiana Power to Louisiana Gas and related transactions. Our Division of Corporate Regulation also filed a statement of position and brief opposing reopening of the record. We heard oral argument with respect to the question of reopening the record.

We are of the opinion that no basis for reopening the proceedings culminating in our order of March 20, 1953 has been shown. Those proceedings involved a full hearing at which Louisiana Power, and its parent, Middle South Utilities, Inc., appeared, adduced evidence and presented arguments that Louisiana Power could retain its gas properties consistently with the standards of Section 11 (b) (1) of the Act. The Louisiana Commission, although duly notified of the proceedings, did not appear and took no part therein. After full consideration we issued a Findings and Opinion which 114 set forth in detail the reasons why the standards of Section 11 (b) (1) would not permit the retention of the non-electric properties of Louisiana Power. No petition for a review of our order was filed.

Under Section 11 (b) this Commission may "revoke or modify any order previously made under this subsection if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist." We have carefully considered the offer of proof made by the Louisiana

Commission and the arguments relating thereto and are of the opinion that no grounds for questioning our earlier conclusion and no changed circumstances justifying a modification of our order have been indicated. The Louisiana Commission has not alleged or indicated that the conditions on which our order was based do not exist. In its offer of proof, the Louisiana Commission merely sought to show that independent operation of the gas system would increase expenses.⁸ Our Findings and Opinion accompanying our order of divestment recognized that separation of electric and gas utility systems from common control frequently results in some increase in operating expenses. We there pointed out that under Section 11 (b) (1) Louisiana Power could retain its gas operations only if they were so small that they could not operate economically under separate management, and we found that it was clear that the Louisiana Power's gas properties are capable of effective and economical operation as a separate entity. The Louisiana Commission in its offer of proof did not allege or indicate that this conclusion was incorrect.

Accordingly, we shall deny the petition of the Louisiana Commission insofar as it requests the reopening of the proceedings in which our order of March 20, 1953 was entered. Pursuant to the request of that Commission a hearing will be scheduled on the application-declaration covering the proposed transfer of non-electric properties by Louisiana Power to Louisiana Gas and related matters. However, such hearing shall be strictly limited to matters relevant to the application-declaration and shall in no way involve any question as to the permanent retainability of the non-electric properties of Louisiana Power.

An appropriate order will issue.

By the Commission (Chairman Armstrong and Commissioners Adams, Goodwin, and Orrick), Commissioner Patterson not participating.

ORVAL L. DUBoIS,
Secretary.

⁸The facts alleged and the argument in the Louisiana Commission's offer of proof were challenged by Jefferson Parish and the Division.

116 Before the Securities and Exchange Commission

IN THE MATTER OF MIDDLE SOUTH UTILITIES, INC., ARKANSAS
POWER & LIGHT COMPANY, LOUISIANA POWER & LIGHT
COMPANY, MISSISSIPPI POWER & LIGHT COMPANY, NEW
ORLEANS PUBLIC SERVICE, INC., RESPONDENTS

(File No. 59-100)

ELECTRIC POWER & LIGHT CORPORATION

(File No. 54-139)

LOUISIANA POWER & LIGHT COMPANY, LOUISIANA
GAS SERVICE CORPORATION

(File No. 70-3315)

LOUISIANA POWER & LIGHT COMPANY

(File No. 31-620)

(Public Utility Holding Company Act of 1935)

*Order denying petition to reopen prior proceedings
and modify order*

September 13, 1955

The Commission having on March 20, 1953 in proceedings pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935, entered an order directing that 117 Louisiana Power and Light Company dispose of its non-electric properties, and the Louisiana Public Service Commission having filed a petition seeking, among other things, to reopen the aforesaid proceedings and modify the aforesaid order, and having filed an offer of proof and a brief in support thereof;

Briefs having also been filed by Louisiana Power and Light Company, Jefferson Parish, Louisiana, and the Division of Cor-

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porate Regulation of the Commission, and the Commission having heard oral argument;

The Commission having this day issued its Findings and Opinion, on the basis thereof

It is ordered, That the aforesaid petition of Louisiana Public Service Commission to the extent that it requests reopening of the aforesaid Section 11 (b) (1) proceedings be, and it hereby is, denied.

By the Commission.

ORVAL L. DUBois,
Secretary.

141 *Minute entry of argument and submission*

June 2, 1956

[Omitted in printing.]

142 [File endorsement omitted.]

In the United States Court of Appeals for the Fifth Circuit

No. 15820

LOUISIANA PUBLIC SERVICE COMMISSION, PETITIONER
versus

SECURITIES AND EXCHANGE COMMISSION, RESPONDENT

PETITION FOR REVIEW OF ORDER OF THE SECURITIES AND EXCHANGE COMMISSION

Before RIVES, TUTTLE and JONES, Circuit Judges.

Opinion

June 30, 1956

TUTTLE, Circuit Judge: This is a petition to review an order of the Securities and Exchange Commission denying a petition to reopen and receive new evidence in proceedings which culminated in a Commission order of March 20, 1953, directing

a public utility holding company and three of its subsidiaries
to dispose of their direct and indirect ownership in
143 certain non-electric properties. The Securities and

Exchange Commission opposes the petition for review
on the grounds that the denial of a petition to reopen proceedings
is not a reviewable order under Section 24 (a) of the
Public Utility Holding Company Act, 15, U.S. C. A. § 79x,
and that, in any event, the petition to reopen was without
merit.

The Securities and Exchange Commission issued an earlier
order regarding these properties on March 7, 1949, when it
approved a plan for the dissolution of the Electric Power &
Light Corporation and the creation of Middle South Utilities,
Inc., which acquired from the Electric Power & Light Corporation
the latter's sole ownership of the Arkansas Power &
Light Company, the Louisiana Power & Light Company, and
the Mississippi Power & Light Company. It also acquired
from the Electric Power & Light Corporation 95.2% of the
common stock of New Orleans Public Service, Inc., and all of
the securities of the Gentilly Development Company, a non-
utility land company. The Securities and Exchange Com-
mission, in approving the plan, reserved jurisdiction to make
further findings under Section 11 of the Act, 15 U. S. C. A.
§ 79k, regarding the integrated character of the electric prop-
erties of Middle South's subsidiaries, and the retainability of
non-electric properties by these companies.

Subsequent to this order, the Arkansas Power & Light Com-
pany and the Mississippi Power & Light Company disposed of
nearly all their non-electric properties and thereafter engaged
almost exclusively in electric operations. The Gentilly
144 Development Company disposed of its land and had
only cash as a major asset. The Louisiana Power &
Light Company, however, retained both electric and gas
properties, and New Orleans Public Service, Inc., continued to
engage in electric, gas and transportation operations. In
January, 1953, the Securities and Exchange Commission issued
an order convening a hearing pursuant to Section 11 (b) (1)
of the Act, 15 U. S. C. A. § 79k (b) (1), to decide, inter alia,

whether Middle South Utilities, Inc. and the Louisiana Power & Light Company should be required to dispose of the gas utility and non-utility assets of the Louisiana Power & Light Company, and if so, upon what terms and conditions. The named respondents were Middle South Utilities, Inc., the Arkansas Power & Light Company, the Mississippi Power & Light Company, and New Orleans Public Service, Inc. A copy of the order was served upon the petitioner here, the Louisiana Public Service Commission, by registered mail. However, the Louisiana Public Service Commission did not appear, nor did any other public body or group of public security holders appear with regard to the retainability of gas properties by the Louisiana Power & Light Company.

On March 20, 1953, the Securities and Exchange Commission issued its findings and order, which required Middle South Utilities, Inc., the Arkansas Power & Light Company, the Louisiana Power & Light Company, and the Mississippi Power & Light Company to dispose of their direct and indirect ownership in non-electric properties. New Orleans Public Service, Inc., was allowed to retain its gas and transportation properties along with its electric properties, in view of the strong desire

of the City of New Orleans for New Orleans Public Service, Inc. to continue unified operations, and the special character of the franchise and regulatory system in that city.

Insofar as is pertinent here, the effect of the order was to require Middle South Utilities, Inc., the Arkansas Power & Light Company, the Louisiana Power & Light Company, and the Mississippi Power & Light Company to dispose of certain steam and water properties owned by the three subsidiaries. It likewise required Middle South Utilities, Inc. and the Louisiana Power & Light Company to divest themselves of the latter's gas properties.

No petition for review of this order was filed, and the Securities and Exchange Commission set March 20, 1955 as the deadline for compliance therewith by Middle South Utilities, Inc. and the Louisiana Power & Light Company. On November 10, 1954, the Louisiana Power & Light Company and the Louisiana Gas Service Corporation filed a joint application-declara-

tion with the Securities and Exchange Commission, proposing that the newly incorporated Louisiana Gas Service Corporation acquire all the non-electric properties of the Louisiana Power & Light Company. The Louisiana Power & Light Company was to own all the common stock of the Louisiana Gas Service Corporation. Thereafter the petitioner here, the Louisiana Public Service Commission, requested a public hearing on the matter and also asked that the Securities and Exchange Commission reopen the record in the proceeding which had resulted in the divestment order. Upon the suggestion of 146 the Securities and Exchange Commission, petitioner filed a detailed offer of proof and a brief in support of its request. After oral argument, the Commission, by order of September 19, 1955, denied the Louisiana Public Service Commission's request that the prior proceeding be reopened. The Louisiana Public Service Commission here challenges the legality of this order.¹

We think the order of September 19 is reviewable. The order here involved is not of the type dealt with in *Wayne United Gas Co. v. Owens-Illinois Glass Co.*, 300 U. S. 131, but is an order based on a procedure specifically authorized by § 79k (b) of the statute.² This provision was availed of by the petitioner here by requesting that the record be reopened. The fact that the Securities and Exchange Commission considered the petition, suggested that petitioner file an offer of proof, considered the proof thus offered, and made a specific finding

¹ The Louisiana Power & Light Company intervened in this court, reiterating the arguments of the Louisiana Public Service Commission. Middle South Utilities, Inc. also intervened, stating that it was in accord with the views expressed by the petitioner and the Louisiana Power & Light Company, but strongly opposing a reopening of the record which would result in reconsideration of the status of the entire Middle South system; in effect, it desired a reconsideration only of that part of the Securities and Exchange Commission's divestment order which required the Louisiana Power & Light Company and itself to dispose of the Louisiana Power & Light Company's gas properties.

² With regard to § 11 (b) proceedings, the Act provides: "The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 79x of this title." 15 U. S. C. A. § 79k (b).

that "no grounds for questioning our earlier conclusion * * * have been indicated" demonstrates that the Commission considered this procedure as a petition to modify the earlier
147 order. The order denying this request is expressly reviewable.³

The Commission contends that the power to revoke or modify upon a finding that the conditions upon which the order was predicated do not exist comes into play only if a change in conditions has occurred after the entry of the earlier order.⁴ The action of the Securities and Exchange Commission here indicates that it considered that it had the duty to consider the proof that related to the conditions that existed as of the time the earlier order was entered. The language of the statute does not precisely state whether the utility can ask for a modification of the earlier order by a subsequent showing that the facts were not as they were taken to be when the order was issued or whether a modification can be had only upon a showing that conditions have changed subsequent to the earlier order. The language is susceptible of the construction, however, that if, in fact, it can be shown that the conditions on which the order was predicated were not truly the actual conditions, then a modification may be sought and obtained. We hold that such modification may be based on the facts as they existed at the time of the order which is to be modified.

A review of action by the Securities and Exchange Commission denying such modification is, as we have noted, expressly provided for. Such review is thus not circumscribed by the rules applying to review of discretionary acts. In passing on any petition for revocation or modification, as provided for in § 79k (b) the normal standards by which an administrative tribunal arrives at its decision would, of course, apply. There must be a basis in fact for the decision and the facts must be applied in accordance with the proper rules of law.

³ See last sentence of section 79k (b), fn. 2, *supra*.

⁴ Extensive authority for this proposition is cited in the nature of orders by the Securities and Exchange Commission. No court decision is cited to support this construction. The language of the court's opinion in *American Power Co. v. S. E. C.*, 329 U. S. 90, at p. 121, seems to indicate to the contrary.

Petitioner here contends that these standards were not met because, so it contends, the Commission misconstrued § 79k (b) (1)^{*} in holding that the only company whose loss of substantial economies was to be considered was the projected gas company; that the loss of substantial economies to the parent Louisiana Power & Light Company resulting from the severance is not to be considered. The respondent agrees that such is its position. It says that it has consistently construed this section in the challenged manner. The Securities and Exchange Commission says in its brief that "The meaning of this clause is clear from the legislative history and from Securities and Exchange Commission and court decisions." In support of its position it quotes from the statement of the managers on the part of the House accompanying the Conference Report^{*}

and a statement made by a senator on the floor of the
149 Senate after the passage of the bill, but before the President had signed it.[†] It also cited Philadelphia Company et al; 28 S. E. C. 35, 52, and General Public Utility Corporation, Holding Company Act Release No. 10982, as its prior decisions on the point, and cited *Philadelphia Company v. S. E. C.* (D. C. Cir.), 177 F. 2d 720, 724, 725, as accepting without discussion the Securities and Exchange Commission's views on the matter.

We think that the language of a statute should be construed, if possible, by taking the usual intendment of the words without

* This section provides that the Commission shall "permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

A. Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system."

* This clause was inserted for the first time by the Conference Committee. This statement, as quoted in respondent's brief, was that it was a " * * * provision to meet the situation when a holding company can show a real economic need on the part of additional integrated systems for permitting the holding company to keep these additional systems * * *."

* This statement made by Senator Wheeler, quoted by the respondent's brief, was that the effect of the clause "would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems * * * were incapable of economic operation * * *."

reference to such aids to construction as the legislative history, which may be helpful only if the language itself is not clear.

Giving to the language of § 79k (b) the meaning normally attributed to the words used, we think it quite clear that if, in fact, there is a loss of substantial economies either to the separated utility or to the parent company, then the proviso in clause A is satisfied, for in such event it is clear that "each of such additional systems [here the gas system] cannot be operated without the loss of substantial economies [to the parent company] which can be secured by the retention of control by such holding company of such system." Since the term "loss of substantial economies" is not expressly restricted in the statute to the economies relating to the operation of the additional companies, but is in terms broad enough to include the loss of substantial economies to the holding
150 company as well, it would require judicial legislation for the court to cut it down as contended for by the Securities and Exchange Commission.

Neither the legislative history, if we are to consider that, nor the one court decision, relied on by the respondent, discussed this precise point. We cannot permit our conclusion as to the correct construction of the Act to be overborne by discussion by another court of other features of the Act from which a contrary construction can at most only be inferred. This is too important a part of the section to be interpreted by such method. Furthermore, while we recognize the merit of respondent's contention that the interpretation placed on a law by the agency enforcing it is persuasive, no one will contend that it is not, after all, the duty of the courts to construe the acts of Congress, even if such construction differs with long accepted administrative policy.

We do not make any findings here contrary to those arrived at by the Securities and Exchange Commission. We do decide that in making its findings on the crucial question of loss of substantial economies the Securities and Exchange Commis-

sion refused to give weight to important facts which, if as alleged by petitioner, would have presented an entirely different picture.⁸

There remains the question as to what is meant by the language "substantial economies." The Commission contends that economies are not substantial unless their loss "would cause a serious economic impairment of the system" such as "to render it incapable of independent economical operation." It cites *Engineers Public Service Co. v. S. E. C.* (D. C. Cir.), 138 F. 2d 936, and *Philadelphia Co. v. S. E. C.* (D. C. Cir.), 177 F. 2d 720, as supporting this proposition. We think neither case accepts the contention of the Securities and Exchange Commission that the words "substantial economies" must be so construed. The Engineers Public Service Co. case says "substantial economies must mean, as was said in *North American Company v. S. E. C.* (2 Cir.), 133 F. 2d 148, 152, 'important economies.' " To be sure there was a dissent in which Judge Soper, who wrote the opinion, favored a reversal of the order of the Securities and Exchange Commission because he thought the undisputed facts constituted a showing of "substantial economies." The majority merely felt that the evidence was not conclusive, and therefore declined to reverse the finding of the Commission. There was no specific holding by the court that the Commission's formula as to what was meant by "substantial economies" was universally applicable. Much the same is true of the later decision in the Philadelphia Company case. There the court affirmed an order of the Securities and Exchange Commission, in which its limiting formula had been applied. The court there said "'substantial' is a relative and elastic term." In the context of the particular case, the court then said: "We cannot find the Commission's understanding of the term 'substantial economies' is wrong."

* The offer of proof included detailed computations showing anticipated losses of \$684,377 of economies to the electric Company following the dismemberment, which, when added to computed losses of \$272,816 to the gas utility, constituted a sizeable, if not a substantial, figure.

We are convinced that the formula proposed by the Commission is not one that is to be inflexibly used in the 152 application of clause A of the saving section. We think as has been said by the Court of Appeals for the Second Circuit in *North American Company v. S. E. C.* (2 Cir.), 133 F. 2d 148, 152, and as stated in the Engineers Public Service Company case, *supra*, that the term "substantial economies" means important economies. The question of their importance must, of course, be determined by the bearing they have on the ability of the two systems to continue in the serving of the two commodities in general demand without substantial change in policy, serving practically in the same way, making substantially the same gains, suffering substantially the same losses.*

Finding as we do that the Commission excluded from its consideration what, if any, economies might be lost to Louisiana Power and Electric Company in its application of Clause A, and finding as we do that the commission's concept as to what constituted "substantial economies" was too rigid, it becomes necessary for us to grant the relief requested by the petitioner and remand this proceeding to the Securities and Exchange Commission for its further consideration in the light of this opinion.

An intervention has been filed in this case by Middle South Utilities, Inc., in which the intervenor strenuously objects to any action here that would cause or authorize the reopening by the Securities and Exchange Commission of the order of March 20, 1953, as relates to the Middle South system as a whole. The further consideration to be given to this matter

by the Securities and Exchange Commission is restricted 153 to the relations between Middle South, the Louisiana

Power and Electric Company and the gas system, and nothing said in this opinion shall be taken to authorize a reconsideration of any other features of the March 20, 1953 order.

* See *Engineers Public Service Co. v. S. E. C.* (D. C. Cir.), 138 F. 2d 936, 944.

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In United States Court of Appeals

No. 15820

LOUISIANA PUBLIC SERVICE COMMISSION

versus

SECURITIES AND EXCHANGE COMMISSION

Minute entry of judgment

June 30, 1956

This cause came on to be heard on the petition of Louisiana Public Service Commission for a review of an order of the Securities and Exchange Commission dated September 13, 1955, "In the Matter of Middle South Utilities, Inc., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., Respondents, File No. 59-100; Electric Power & Light Corporation, File No. 54-139; Louisiana Power & Light Company, File No. 61-620 (Public Utility Holding Company Act of 1935)", and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition for review in this cause be, and the same is hereby, granted; and that this cause be, and it is hereby, remanded to the Securities and Exchange Commission for its further consideration in the light of the opinion of this Court.

* * * * *

155 [Clerk's Certificate to foregoing transcript omitted in printing.]

156 Supreme Court of the United States

OCTOBER TERM, 1956

No. 466

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

vs.

LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

Order allowing certiorari

Filed December 3, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered, That the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.